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No. _____

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

SAMUEL LEWIS, *et al.*,
Petitioners,
v.

FLETCHER CASEY, JR., *et al.*,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

REX E. LEE
CARTER G. PHILLIPS
SIDLEY & AUSTIN
1722 I Street, N.W.
Washington, D.C. 20006
(202) 736-8000

DANIEL P. STRUCK
Counsel of Record
KATHLEEN L. WIENEKE
DAVID C. LEWIS
EILEEN J. DENNIS
JONES, SKELTON & HOCHULI
2901 N. Central Avenue
Suite 800
Phoenix, Arizona 85012
(602) 263-1700
Attorneys for Petitioners

132142

QUESTION PRESENTED

Whether the district court's order in this "access to courts" case, which greatly expanded the State of Arizona's financial and administrative burdens and shifted much of the management of the state's prison system to the federal judiciary, exceeds the constitutional requirements set forth in *Bounds v. Smith*, 430 U.S. 817 (1977).

LIST OF PARTIES

Petitioners are the following prison officials of the Arizona Department of Corrections: Samuel A. Lewis, Director; Robert Goldsmith, Arizona State Prison Complex, Florence; Warden William Rhode, Arizona State Prison Complex, Perryville; Warden George Herman, Arizona State Prison Complex, Douglas; Warden Roger Crist, Arizona State Prison Complex, Tucson; Warden Hal Cardin, Arizona State Prison Complex, Phoenix.

Respondents include twenty-two class representatives, on behalf of themselves and all other similarly situated inmates in the Arizona Department of Corrections. The twenty-two representative plaintiffs are Fletcher Casey, Jr., Stephen James, Frank Bartholic, Armando Munoz, Kyle Baptisto, David A. Mann, Jeffrey Lustig, Terry Don McFalls, Randy Sampson, John Tomlin, Scott Tramosch, Pamela McQuillen, Carolyn Ferguson, Yvonne Martin, David Tucker, Susan Colker, John Myers, Mary Jo Booker, Randy Thomas, Ruth Johnson, Roman Stone, and Robert Bankston.

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FLETCHER CASEY, JR., *et al.*,
Respondents.

**Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

The Arizona prison official petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the court of appeals (Appendix A) is reported at 43 F.3d 1261. The opinion of the district court (Appendix B) is reported at 834 F. Supp. 1553; the district court's October 13, 1993 permanent injunction (Appendix C)¹ is unreported, but was stayed

¹ Because the district court's injunction includes voluminous appendices irrelevant to this petition, they have not been included in the appendix hereto.

by this Court in an order published at 114 S.Ct. 1638 (Appendix D).

JURISDICTION

The court of appeals rendered its judgment and opinion on December 27, 1994 (Appendix A). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment states in pertinent part as follows:

[N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a prisoner "access to the courts" class action against the Arizona Department of Corrections ("ADOC"), its director, and administrators, alleging, *inter alia*, that ADOC unconstitutionally denied respondents meaningful access to the courts. The District Court for the District of Arizona had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3) and 2201.

After a bench trial, Hon. Carl A. Muecke, District Judge for the District of Arizona, ruled in the respondents' favor. He appointed a special master to design a legal access program, which the court adopted in its entirety in an October 13, 1993 order of permanent injunction.²

² In its order appointing the special master, the district court required ADOC officials to deposit at least \$5,000 A MONTH in a bank account maintained for use by the special master and his assistant. (Appendix E). This account was reserved solely for the special master's costs, such as travel and office expenses. The special master and his assistant have billed ADOC nearly \$12,000 PER MONTH in fees and costs while monitoring compliance.

After unsuccessfully requesting both the district court and the court of appeals to stay the injunction, petitioners requested this Court to do so. This Court granted the stay, pending the timely filing of this petition for writ of certiorari. *Lewis v. Casey*, 114 S.Ct. 1638 (1994) (Appendix D).

The Ninth Circuit affirmed the injunction in pertinent part.³ Specifically, the court upheld the district court's conclusion that ADOC was required, under *Bounds v. Smith*, 430 U.S. 817 (1977), to:

- Open petitioners' law libraries between 50 to 80 hours per week, including night and weekend hours, regardless of demand;
- Provide fully equipped law libraries at every prison unit with a capacity of 150 inmates;
- Hire full-time, professionally trained librarians with law or paralegal degrees for every law library;
- Provide extensively trained inmate legal assistants to all inmates, even if the inmates are literate and have physical access to a law library;
- Provide a legal assistant training program, including a legal research course of approximately 60 hours in length to be taught by lawyers, law students, or trained paralegals at each law library twice a year, *ad infinitum*;
- Provide a weekly minimum of three 20-minute telephone calls to an attorney, an attorney representative, or a legal organization;

³ The court vacated in part and remanded in part on issues not directly relevant to this petition. The issues remanded concerned the \$46 indigency standard imposed by the district court, the proper copying cost, and the court's refusal to allow petitioners any opportunity to object to the fees of the special master. The only portion of the injunction vacated by the Ninth Circuit was the ordered purchase of electric typewriters, which respondents conceded on appeal were not constitutionally required.

- Purchase a complete up-to-date set of Pacific Reporters and Digests for each law library;
- Allow inmates to regulate the time, place and manner in which they gain access to and utilize the law library and legal assistants; and
- Allow inmates direct access to the library stacks, unless petitioners can first document an actual security risk.

Although the plaintiff class in this case is not limited to illiterate or non-English speaking inmates, the Ninth Circuit nevertheless held that ADOC's failure to staff its libraries with trained bilingual legal assistants, *in addition to* furnishing law libraries, across the entire state, violated the right to access. App. A at 8a; 43 F.3d at 1267. The court acknowledged that this aspect of its holding conflicts with the holdings of other courts of appeals. App. A at 14a; 43 F.3d at 1270.

The court also held that "unless ADOC can demonstrate actual security risks, an inmate should be allowed access to the law library," even if that inmate is in "lockdown" because of previous disciplinary or security problems. App. A at 6a; 43 F.3d at 1267. The court, however, did not even address the constitutional adequacy of ADOC's "paging" system for these high-risk inmates, whereby materials are sent to the prisoner's cell, upon request, generally within 24 hours, or the inmate receives help from a designated inmate legal assistant.

In response to ADOC's argument that the scope of the injunction far exceeded the requirements of *Bounds*, the Ninth Circuit stated that the district court indeed had "broad" powers to do so, which were inherent in the court's power to fashion equitable remedies. App. A at 13a; 43 F.3d at 1270.

REASONS FOR GRANTING THE PETITION

The lower courts have ~~considered~~ what is "reasonable" with what is constitutionally required. This Court's decision in *Bounds* was the culmination of a series of opinions concerning the ability of prisoners to petition the courts. See generally *Johnson v. Avery*, 393 U.S. 483 (1969); *Younger v. Gilmore*, 404 U.S. 15 (1971); *Wolff v. McDonnell*, 418 U.S. 539 (1974). Both *Johnson* and *Wolff* invalidated prison regulations that had *barred* prisoners from assisting each other. Nothing in these opinions, however, suggests that states are constitutionally *required to furnish* the sweeping legal assistance ordered by the lower courts here. The Ninth Circuit failed to recognize that distinction between what a state must *allow* to occur and what a state is constitutionally *required to furnish* in terms of inmate legal assistance.

The district court's order has crossed the line between constitutional interpretation and micro-management of a state's penal system. Two aspects of the Ninth Circuit's decision directly conflict with other courts of appeals. While the Ninth Circuit has acknowledged only one of these, both are clear conflicts.

Review by this Court is necessary to resolve the conflicts and restore the constitutionally prescribed lines that mark the boundaries between the authority of federal judges and that of elected state officials.

1. To the extent this case involves class members who are illiterate or non-English speaking, petitioners, and states in general, need to know whether *Bounds* requires them to furnish trained bilingual legal assistants in addition to constitutionally adequate law libraries. The courts of appeals are split on this issue. Some courts have held that law library access for these prisoners is constitutionally adequate, because this places them in the same

position as their civilian counterparts. These courts reason that prisoners should enjoy no greater advantage in this respect solely because they are convicted criminals. *Hooks v. Wainwright*, 775 F.2d 1433, 1436-37 (11th Cir. 1985), *cert. denied*, 479 U.S. 913 (1986); *Bee v. Utah State Prison*, 823 F.2d 397, 398 (10th Cir. 1987). See also *Williams v. Leeke*, 584 F.2d 1336, 1341 (4th Cir. 1978) (Hall, J., concurring in part and dissenting in part), *cert. denied*, 442 U.S. 911 (1978).

Other circuits have said *Bounds* requires states to furnish functionally illiterate prisoners with special legal assistance. These courts reason that without legal assistance from persons trained in the law, illiterate prisoners are denied "meaningful" access because the libraries are of no use to them. See generally *Knop v. Johnson*, 977 F.2d 996, 1006 (6th Cir. 1992), *cert. denied*, *Knop v. McGinnis*, 113 S.Ct. 1415 (1993); *Cruz v. Hauck*, 627 F.2d 710, 721 (5th Cir. 1980); *Valentine v. Beyer*, 850 F.2d 951, 956-57 (3d Cir. 1988).⁴

This division among the circuits is particularly troublesome for border states like Arizona, which are experiencing an ever-increasing influx of non-English speaking illegal immigrants. It is unacceptable that two neighboring border states, Arizona and New Mexico, should be subject to different constitutional requirements solely because they happen to be located in different circuits, both of which have addressed this question and reached opposite results. Granting this petition for writ of certiorari is necessary to settle the issue and resolve the conflict.

⁴ Prior to the decision in the present case, the Ninth Circuit had assumed, but had not decided, that the Constitution required additional assistance to uneducated, illiterate, or non-English speaking inmates. *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 856 (9th Cir. 1985).

2. This case squarely presents another issue on which the courts of appeals are in conflict. The issue is whether *Bounds* requires either law libraries or legal assistance from persons trained in the law, or whether *Bounds* requires both for a class of prisoners that is not limited to illiterate or non-English speaking inmates. In this case, the lower courts have required ADOC to supply both under some general concept of "meaningful" access, which petitioners maintain contravenes the specific holding of *Bounds*.

Most circuits have interpreted *Bounds* to require only "adequate law libraries or adequate assistance from persons trained in the law," but not both. See *Cepulonis v. Fair*, 732 F.2d 1, 6 (1st Cir. 1984); *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 855 (9th Cir. 1985); *Campbell v. Miller*, 787 F.2d 217, 229-30 (7th Cir. 1986), *cert. denied*, 479 U.S. 1019 (1986); and *Morrow v. Harwell*, 768 F.2d 619, 623 (5th Cir. 1985). Prior to this case, the Ninth Circuit was among the courts of appeals adhering to this majority rule. *Lindquist*, 776 F.2d at 855.

Other federal courts, relying upon one sentence from *Bounds*, 430 U.S. at 832, evaluate the circumstances "as a whole," and conclude that law books plus access to legal assistance from individuals trained in the law are required. See *Battle v. Anderson*, 614 F.2d 251, 255-56 (10th Cir. 1980); *Kendrick v. Bland*, 586 F. Supp. 1536, 1549 (W.D.Ky. 1984); and *Glover v. Johnson*, 478 F. Supp. 1075, 1096 (E.D.Mich. 1979). The Ninth Circuit in this case recognized the conflict. App. A at 14a; 43 F.3d at 1270.

3. Mindful that "prison administrators . . . , and not the courts, are to make the difficult judgments concerning institutional operations," *Turner v. Safley*, 482 U.S. 78, 89 (1987), this Court has allowed infringements

on prisoners' constitutional interests that are reasonably related to legitimate penological interests. *Id.*⁵

In this case, the Ninth Circuit ignored the legitimate penological interests of Arizona's prison administrators. By forcing ADOC to allow *all* inmates access to the law libraries, including those in high-security lockdown units, the Ninth Circuit erroneously disregarded the "reasonable relation" standard. It failed even to consider whether the "paging" system, in combination with help from designated inmate legal assistants for these high-security inmates, is a constitutionally adequate method of access that is reasonably related to a legitimate penological interest. The error threatens ADOC's ability to maintain adequate security at its prisons.

4. During trial, respondents presented no evidence whatsoever that illiterate or non-English speaking inmates were actually denied access to the courts or that ADOC's efforts to assist them were insufficient. For this reason, respondents' claims should have been denied summarily. See *Shango v. Jurich*, 965 F.2d 289, 292-93 (7th Cir. 1992); *Vandelft v. Moses*, 31 F.3d 794, 796 (9th Cir. 1994) (prisoner who contends that inadequate law library violates his right of access to the courts must show that the inadequate access caused him actual injury). The Ninth Circuit thus erred in placing the burden upon ADOC to demonstrate that its chosen methods of access were adequate. App. A at 5a; 43 F.3d at 1266.⁶

⁵ The *Turner* standard applies to all prison regulations that impinge on an inmate's constitutional rights. See *Washington v. Harper*, 494 U.S. 210, 223 (1990); *Thornburgh v. Abbott*, 490 U.S. 401, 407-08 (1989); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987).

⁶ The Ninth Circuit also erred when it refused to consider the actual injury issue (App. A at 6a, n.3; 43 F.3d at 1267, n.3). Petitioners had argued in their Ninth Circuit opening brief that respondents had not presented evidence of actual injury. See e.g., opening brief at 10 ("there existed no evidence that inmates who were slow readers have had their cases dismissed with prejudice as

5. This Court in *Bounds* emphasized that prison administrators must have wide discretion in the management of their prisons. 430 U.S. at 832-33.⁷ This Court has repeatedly emphasized the need for judicial restraint in the area of prison administration. See *Thornburgh v. Abbott*, 490 U.S. 401, 407-08 (1989) (courts should defer to prison administrators in resolving the day-to-day problems in managing a prison, which lie within the expertise of prison officials); *Rufo v. Inmates of Suffolk County Jail*, 112 S.Ct. 748, 764 (1992) ("district court [must] defer to local government administrators, who have the 'primary responsibility for elucidating, assessing, and solving' the problems of institutional reform . . ."). Justice O'Connor, in a concurring opinion, recently affirmed that "[b]eyond the requirements of *Bounds*, the matter is one of legislative choice based on difficult policy considerations and the allocation of scarce legal resources." *Murray v. Giarratano*, 492 U.S. 1, 13 (1989).

While paying lip service to the proposition that the "remedy may not overly intrude into the administration of the prison system," App. A at 14a; 43 F.3d at 1270, the Ninth Circuit violated the principle and upheld virtually every minute, intrusive remedial measure the district judge ordered. Taken together, these mandates constitute precisely the type of micro-management of state prisons repeatedly criticized by this Court. Calling the injunction necessary for "effective" relief does not bring this micro-

a result of their inability to receive adequate legal assistance"); at 24 ("Significantly, Plaintiffs failed to offer any evidence that any inmate denied physical access to the library was prevented from exercising his right of access to the courts by virtue of insufficiently trained legal assistants"); and at 26 ("No such evidence exists [that the 261 inmates denied access to the law library were in need of, but did not receive, help with their legal work caused by a shortage of legal assistants]").

⁷ At the conclusion of *Bounds*, this Court praised the district court for not "thrust[ing] itself into prison administration." 430 U.S. at 832-33.

management within the scope of what the Constitution requires.

Among other things, the Ninth Circuit allowed Judge Muecke to: (1) set, within limits, the actual operating hours and days for the law libraries, without regard to actual use; (2) dictate where the prisoners may sit; (3) analyze the prisons' schedules of activities and events, the names of all library employees, and their specific work schedules; (4) set the precise procedure for ADOC's response to library and legal assistance requests; (5) impose conditions for removing prisoners from the libraries; (6) dictate the contents of a research course videotape and live presentation that ADOC must provide, and when it may be viewed; (7) impose detailed operating procedures for legal assistants; (8) set the qualifications for librarians hired; (9) specify the minimum number and length of attorney telephone calls which must be allowed; and (10) regulate the time, place and manner in which inmates gain access to and use the law library and legal assistants. Not only does this greatly exceed *Bounds*, but it is difficult to imagine a more intrusive and egregious example of federal court micro-management of a prison system.⁸

⁸ The pervasiveness of the court's micro-management is perhaps best demonstrated by the extent and specificity of the library collection the lower courts said was constitutionally mandated in this case. As a result of an earlier order by the same district judge, all 33 prison law libraries in the State of Arizona are already equipped with what the district court characterized as the "Muecke list". *Wilkinson v. McDougal*, CIV 81-1397. The Muecke list consists of the United States Code Annotated; Supreme Court Reporter; Federal Reporter Second; Federal Supplements; Shepards U.S. Citations; Shepards Federal Citations; Local Rules for the Federal District Court; Modern Federal Practice Digests; Federal Practice Digest (Second); Arizona Code Annotated; Arizona Reports; Shepards Arizona Citations; Arizona Appeals Reports; Arizona Law-of-Evidence (Udall); ADC Policy Manual; 108 Institutional Management Procedures; Federal Practice and Procedures (Wright); Corpus Juris Secundum and Arizona Digest. The lower courts in this case have now held that in addition to

The Ninth Circuit implicitly agreed that the district court's injunction orders "relief that the Constitution would not of its own force initially require" (App. A at 13a; 43 F.3d at 1270). Nonetheless, and despite this Court's repeated admonition that the remedy must do no more than correct the specific violation,⁹ the Ninth Circuit purported to uphold the district court's injunction, which reads like a statute or regulation, under the guise of the district court's "broad equitable powers" to remedy past wrongs. App. A at 13a; 43 F.3d at 1270.

Bounds established that the Fourteenth Amendment sets minimum standards for prisoner access to the courts. There is a point at which federal judges, in attempting to vindicate that right, exceed their proper Article III authority to decide cases or controversies and in effect become not only surrogate prison wardens but also surrogate legislators, with unlimited power to tax and spend. In this case the lower courts have crossed that line, in conflict with the decisions of other courts of appeals. Having stayed the district court's injunction pending the filing of this petition for writ of certiorari, the Court should

this "Muecke list," the Fourteenth Amendment requires complete sets of Pacific Reporters, Digests, and self-help manuals. This is directly contrary to case law from both this Court and another panel of the Ninth Circuit, holding that *Bounds* does not require states to purchase regional reporters. *Bounds*, 430 U.S. at 819; *Lindquist*, 776 F.2d at 856.

⁹ See generally *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class"); *Dayton Bd. of Education v. Brinkman*, 433 U.S. 406, 417 (1977) (instead of tailoring injunctive remedy commensurate with specific constitutional violations, court improperly imposed system-wide remedy); *Milliken v. Bradley*, 418 U.S. 717, 738 (1971) ("once a constitutional violation is found, a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation'"); and *Keyes v. School Dist. No. 1, Denver, Colorado*, 418 U.S. 189, 213 (1973) (only if there has been a system-wide impact may there be a system-wide remedy).

grant the petition to remedy the conflicts and restore the separation of powers lines of demarcation to their proper bounds.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

REX E. LEE
CARTER G. PHILLIPS
SIDLEY & AUSTIN
1722 I Street, N.W.
Washington, D.C. 20006
(202) 736-8000

DANIEL P. STRUCK
Counsel of Record
KATHLEEN L. WIENEKE
DAVID C. LEWIS
EILEEN J. DENNIS
JONES, SKELTON & HOCHULI
2901 N. Central Avenue
Suite 800
Phoenix, Arizona 85012
(602) 263-1700
Attorneys for Petitioners

March 14, 1995

APPENDIX A

[Filed Dec. 27, 1994]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 93-17169

D.C. No. CV 90-0054 CAM

FLETCHER CASEY, JR., *et al.*, on behalf of themselves
and all others similarly situated,
Plaintiffs-Appellees,

vs.

SAMUEL A. LEWIS, Director,
Arizona Department of Corrections, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court
for the District of Arizona
C. A. Muecke, District Judge Presiding

Argued and Submitted: November 16, 1994
Berkeley, California
Submission Deferred: November 17, 1994
Resubmitted: November 23, 1994
Filed: December 27, 1994

Opinion by Judge Harry Pregerson

OPINION

Before: LAY,* PREGERSON, and O'SCANNLAIN,
Circuit Judges

PREGERSON, Circuit Judge:

Defendants-Appellants Samuel A. Lewis, Director of the Arizona Department of Corrections, et al., appeal the district court's order finding that Plaintiffs-Appellees Fletcher Casey Jr., et al., prisoners incarcerated in facilities of the Arizona Department of Corrections, were unconstitutionally denied meaningful access to the courts. Defendants also appeal the district court's issuance of a permanent injunction requiring the Arizona Department of Corrections to implement a plan to ensure prisoners meaningful access to the courts. We have jurisdiction under 28 U.S.C. §§ 1291 and 1292(a)(1). We AFFIRM in part, and VACATE and REMAND in part.¹

BACKGROUND

The Arizona Department of Corrections ("ADOC") operates nine prison facilities located within the State of Arizona. The total male inmate population as of January 22, 1992 was 14,424 and the total female inmate population was 922. On January 12, 1990, pursuant to 42 U.S.C. § 1983, twenty-two prisoners filed this class ac-

* The Honorable Donald P. Lay, Senior Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

¹ At oral argument, attorneys for both Plaintiffs and Defendants expressed a willingness to use the services of this Court's settlement program. This settlement program provides an opportunity for litigants to resolve their dispute in a non-adversarial setting. Ninth Circuit Rule 33-1. Accordingly, we deferred submission of this case for thirty days to enable the parties to reach a settlement. However, before the settlement process had even begun, Defendants declined to mediate. Accordingly, we took this case out of deferred submission into active status.

tion in the United States District Court for the District of Arizona, claiming, *inter alia*,² that prison officials unconstitutionally denied them meaningful access to the courts. The certified class consists of all adult persons who are now, or who will be, in the custody of the Arizona Department of Corrections. Defendants are agents, officials, or employees of ADOC.

On November 16, 1992, following a three-month bench trial, U.S. District Judge C.A. Muecke ruled that ADOC's law libraries and legal assistance programs were inadequate, unconstitutionally denying prisoners meaningful access to the courts. *Casey v. Lewis*, 834 F. Supp. 1553 (D. Ariz. 1992). Specifically, Judge Muecke found the following constitutionally deficient: the contents of the

² The complaint also alleged that prison officials unconstitutionally denied plaintiffs attorney-client contact visitation at high-risk prison facilities, prevented HIV-positive inmates from applying for food-service positions in prison cafeterias, and transferred inmates from prison sites within the State without procedural due process. The district court granted summary judgment in favor of the plaintiff class, and entered an order enjoining ADOC from prohibiting contact visits between inmates and their attorneys except for good cause, and enjoining ADOC from denying food-service employment to HIV-positive inmates absent certain justifications. *Casey v. Lewis*, 773 F. Supp. 1365 (D. Ariz. 1991). A divided panel of this Circuit reversed the district court's grant of summary judgment and vacated the injunction. *Casey v. Lewis*, 4 F.3d 1516 (9th Cir. 1993).

On the remaining allegations, which are not the subject of this appeal, the district court ruled that the treatment available to seriously mentally ill inmates violated the Eighth Amendment, the unequal treatment of male and female inmates violated the female inmates' equal protection rights and Eighth Amendment rights, instances in which ADOC failed to provide disabled inmates accessible bathrooms, showers, and cells did not rise to the level of constitutional violations, delays in providing hearing aids violated the Eighth Amendment, and the provision of legal assistance instead of braille legal books did not violate blind inmates' rights. *Casey v. Lewis*, 834 F. Supp. 1477 (D. Ariz. 1993); *Casey v. Lewis*, 834 F. Supp. 1569 (D. Ariz. 1993).

library; the access to the libraries; the legal assistance for prisoners who are illiterate or who do not speak English; library staffing; the indigency standard for receiving legal supplies; the photocopying policy that allowed the confidentiality of legal documents to be breached; and the restrictions on inmates' telephone calls to their attorneys. *Id.*

The district court appointed Dan Pachoda as Special Master and Expert, and Janet Bliss as Assistant Special Master to work with the parties to develop the proper injunctive relief. On October 13, 1993, the district court issued a permanent injunction, requiring ADOC to implement the legal access plan devised by Pachoda. ADOC now appeals, challenging the district court's findings of fact and conclusions of law, the scope of injunctive relief ordered, and the requirement that ADOC pay the fees of the Special Master without having been given an opportunity to object.

ANALYSIS

A. Standard of Review

We review the district court's legal conclusions de novo. *U.S. v. Yacoubian*, 24 F.3d 1, 3 (9th Cir. 1994). We defer to the district court's findings of fact unless they are clearly erroneous. *Anderson v. City of Bessemer*, 470 U.S. 564, 571-73 (1985); Fed. R. Civ. P. 52(a). We review the scope of injunctive relief for an abuse of discretion or application of erroneous legal principles. *Dexter v. Kirschner*, 984 F.2d 979, 982 (9th Cir. 1992).

B. District Court's Findings of Fact and Conclusions of Law

In *Bounds v. Smith*, 430 U.S. 817, 823 (1977), the Supreme Court firmly established that prisoners have a fundamental right of meaningful access to the courts. The importance of this right cannot be overstated. It is the right upon which all other rights depend. In *Wolff v.*

McDonnell, 418 U.S. 539, 579 (1974), the Court explained that this right "is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." See also *Gilmore v. Lynch*, 319 F. Supp. 105, 110 (N.D. Cal. 1970) ("'Access to the courts' . . . encompasses all the means a defendant . . . might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him."), *aff'd sub nom. Younger v. Gilmore*, 404 U.S. 15 (1971) (per curiam).

To discharge the duty of assuring prisoners meaningful access to the courts, the Court held that States "must assist inmates in the preparation and filing of meaningful papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds*, 430 U.S. at 828. In determining the constitutional adequacy of a legal access program, the Court directed district courts to evaluate the program "as a whole," emphasizing that "meaningful access to the courts is the touchstone." *Id.* at 832, 823.

We hold that the district court correctly applied case law in concluding that ADOC's legal access program unconstitutionally denied inmates meaningful access to the courts. In *Storseth v. Spellman*, 654 F.2d 1349, 1352 (9th Cir. 1981), we held that it is the State's burden to provide meaningful access and to demonstrate that its chosen method is inadequate. ADOC has not met this burden.

1. Contents of the Law Libraries

Undisputed facts support the district court's finding that the contents of ADOC's law libraries are inadequate. In several libraries, volumes of various reporters, as well as the pocket parts to various secondary sources are missing. Updated inventories are unquestionably an essential element of an adequate library system. See *Lindquist v.*

Idaho State Board of Corrections, 776 F.2d 851 (9th Cir. 1985) (affirming district court's order that state must furnish essential and up-to-date law books).

Several libraries also do not contain self-help manuals to instruct inmates on how to use the law books. The complexities of legal research at the very least require these aids to enable inmates to use the books effectively. As the Court in *Bounds* mandated, access must be "adequate, effective, and meaningful." 430 U.S. at 822 (emphasis added).

2. Physical Access

We recognized in *Lindquist* that the Constitution does not guarantee a prisoner unlimited access to a law library, and that "[p]rison officials of necessity must regulate the time, manner, and place in which library facilities are used." 776 F.2d at 858. Accordingly, in *Touissaint v. McCarthy*, 801 F.1d 1080, 1109 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069 (1987), we held that prisons may deny inmates physical access to the law library if such access would threaten institutional security. We affirmed the district court's order that required prison officials to allow segregated prisoners access to a law library "as reasonably necessary, absent documented security reasons." *Id.* at 1108-09.

Following the rule established in *Touissaint*, we hold that unless ADOC can demonstrate actual security risks, an inmate should be allowed access to the law library. The district court correctly concluded that ADOC may not routinely prohibit lockdown inmates from physically using the law library.³ Access to the law library's books is crucial because as we explained in *Touissaint*,

³ We acknowledge that in *Vandelft v. Moses*, No. 92-36566, slip op. at 8359 (9th Cir. July 26, 1994), a divided panel of our Court held that a prisoner who contends that his right of access to the courts was violated because of inadequate access to a law library

legal research often requires browsing through various materials in search of inspiration; tentative theories may have to be abandoned in the course of research in the face of unfamiliar adverse precedent. New theories may occur as a result of a chance discovery of an obscure or forgotten case.

801 F.2d at 1110 (quoting *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978), *cert. denied*, 441 U.S. 911 (1979)).

3. Legal Assistance

For those inmates deemed security risks and denied access to the library, *Bounds* requires the State to provide legal assistance. 430 U.S. at 828. The district court did not err in concluding that the legal assistance provided by ADOC was constitutionally deficient. In some facilities, officials do not require inmate applicants to possess any qualifications aside from a literacy in English. In others, the tests developed to assess the applicants' qualifications do not test for skills in legal research and writing, nor do the officials administer the tests to all of the applicants. Furthermore, in most facilities, the officials do not provide any type of training for the legal assistants. This deficiency directly contravenes the rule set forth in *Bounds* that legal assistance must be provided by persons "trained in the law." *Id.* See also *Gluth v. Kangas*, 951 F.2d 1504, 1508 (9th Cir. 1991) ("the appearance of minimal capacity to assist other inmates alone plainly does not suffice").

Sufficient numbers of trained legal assistants also must be provided to prisoners who are functionally illiterate or whose primary language is not English. It goes without saying that "a book and a library are of no use, in and of themselves, to a prisoner who cannot read." *Lindquist*,

"must show that the inadequate access caused him actual injury." However, because this issue is not now before us, we need not consider *Vandelft*.

776 F.2d at 855-56. ADOC's failure to provide bilingual legal assistants or law clerks in many of the facilities denies non-English-speaking inmates meaningful access. The reliance upon fellow prisoners who are not trained in the law simply does not suffice as an adequate substitute. As the district court found, these fellow prisoners frequently cannot comprehend nor translate legal terminology. Consequently, illiterate and non-English-speaking inmates have been unable to file legal actions or have had their cases dismissed with prejudice.

To be sure, we have held that "the Constitution does not require the elimination of all economic, intellectual, and technological barriers to litigation." *Sand v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1989). However, in invalidating regulations that barred prisoners from assisting each other, the Supreme Court recognized that for illiterate inmates, an adequate library alone was plainly insufficient. *Johnson v. Avery*, 393 U.S. 483, 489 (1969); *Wolff v. McDonnell*, 418 U.S. at 577-80.⁴ The duty of States to furnish legal assistance to illiterate inmates and non-English-speaking inmates is implicit in the holding of *Bounds*, which imposed on States "affirmative obligations to assure *all* prisoners meaningful access to the courts." 430 U.S. at 824 (emphasis added). Without such assistance, illiterate and non-English-speaking inmates undoubtedly would be unable to draft any legal papers, much less meaningful ones.⁵ As the Sixth Circuit observed, "there can be no meaningful access to the judicial system unless some literate person is available to reduce . . . [the] stories [of illiterate inmates] to intelli-

⁴ Indeed, as the *Bounds* Court pointed out, the Court in *McDonnell* decided that inmates should be allowed to assist each other despite the fact that the State already furnished an adequate law library. 430 U.S. at 824.

⁵ This holding is in harmony with the requirement under *Bounds* that indigent inmates must be provided legal supplies necessary to file their claims. 430 U.S. at 824.

gible written pleadings." *Knop v. Johnson*, 977 F.2d 996, 1006 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 1415 (1993). Importantly, the *Bounds* Court noted the advantages of providing legal assistance over libraries alone: more efficient and skillful handling of prisoner cases, the avoidance of disciplinary problems associated with writ writers, and the mediation of many prisoner complaints that would otherwise burden the courts.⁶ 430 U.S. at 831-32.

ADOC argues that it does not need to provide legal assistance to illiterate and non-English-speaking prisoners because through the provision of a law library, it has removed "the barriers to court access erected by imprisonment." Appellants' Brief at 23. This argument is without merit because ADOC overlooks the fact that the restrictions on a prisoner's liberty attendant to imprisonment prevents the prisoner from enlisting the assistance of his family, friends, and a myriad of social services and legal aid organizations that would otherwise be available.

4. Library Staff

In *Lindquist*, 776 F.2d at 855, we noted that to furnish an adequate law library, "some library personnel might be required to keep the books in order." In some facilities, ADOC staffs the library only with security officers who are not trained in maintaining a law library. We affirm the district court's conclusion that this is inadequate. Library staff should at least have some basic knowledge of legal research.

⁶ In the Ninth Circuit alone, fourteen staff attorneys in San Francisco divide their time exclusively between direct criminal appeals and habeas corpus petitions. Thirteen attorneys work on civil appeals, at least 50 percent of which are prisoner § 1983 actions. There are twenty *pro se* law clerks and nine law clerks who focus exclusively on death penalty appeals.

5. Indigency Standard

Bounds affirmed the principle that "indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them." 430 U.S. at 824-25. ADOC's indigency policy allows a prisoner to obtain free legal supplies only if his account balance does not exceed \$22 per month. The prisoner's account is then debited the cost of the supplies, and the debit is held against the account until funds become available.

Defendants argue that the prisoners here have failed to allege an actual injury in a non-core *Bounds* issue, as required under *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989). In *Sands*, we held that if the claimant does not allege inadequate law libraries or inadequate legal assistance, a court must consider whether the allegation consists of a "specific instance in which an inmate was actually denied access to the courts." *Id.*

Although Plaintiff's Complaint did not allege that ADOC's indigency standard denied inmates meaningful access to the courts, Plaintiffs did introduce, without any objection from Defendants, evidence to show that the indigency standard was inadequate. *See* Transcript at 136 (McFadden—Direct) (testimony that the cost of basic supplies alone can amount to \$20); Transcript at 154 (Bishop—Direct) (testimony that prisoners were unable to purchase needed legal supplies under the \$22 standard). In addition, the adequacy of the indigency standard was addressed in Defendants' pre-trial memorandum. *See* Defendants' Amended Pre-Trial Statement at 15.

Under Fed. R. Civ. P. 15(b), "when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Express consent may be found in a stipulation or pre-trial order, and implied consent may be found where evidence is introduced

without objection. *See Dunn v. Trans World Airlines, Inc.*, 589 F.2d 408, 413 (9th Cir. 1978) (Rule 15(b) amendment proper since opposing party referred to unpleaded matter in its trial memorandum); *Slavitt v. Kauhi*, 384 F.2d 530, 534 (9th Cir. 1967) (district court should grant leave to amend because issue was introduced into evidence without objection from defendant); 3 *Moore's Federal Practice* ¶ 15.11 (1994).

Instead of permitting Plaintiffs to amend their pleadings to include an allegation that ADOC's indigency standard deprived indigent inmates meaningful access to the courts, we will treat the pleadings as having been so amended because under Rule 15(b), "the failure to . . . amend does not affect the result of the trial." *See also Dunn*, 589 F.2d at 413 ("If an amendment to the pleadings to conform to the proof should have been made, the Courts of Appeals will presume that it is so made to support the judgment.") (citations omitted).

A study of the actual cost of basic supplies and legal supplies at the Florence unit determined that \$46 is the more realistic amount. *Gluth*, 951 F.2d at 1508. However, because the district court did not make a specific finding that ADOC's indigency standard was inadequate for the plaintiff class, we remand this issue for a proper finding.

6. Photocopying Policy

We reject Defendants' erroneous assertion that Plaintiffs have not alleged an "actual injury" as defined by *Sands, supra*, to state a claim that the photocopying policy breaches the confidentiality of inmates' legal documents. Plaintiffs' Complaint specifically alleges that their confidential legal memos from legal assistants are routinely read by ADOC staff and that because they must give their materials to the staff to be photocopied, the confidentiality of those materials is compromised. Complaint

at 14. Read liberally, as required by our decisions, these allegations suffice to state a claim for the denial of meaningful access to the courts. *See King v. Atiyeh*, 814 F.2d 565, 568 (9th Cir. 1987) (plaintiffs successfully alleged that the provision of only three stamps per week denied them meaningful access to the courts even though complaint only stated that it was often necessary to communicate with the courts more than three times per week).

The district court found that inmates' legal documents have been read by staff members who photocopy them. In *Wolff v. McDonnell*, 418 U.S. 575-77, the Court upheld a prison regulation that allowed staff to inspect, but not to read, inmates' legal mail. Lower courts have held that legal mail may not be read nor copied without the permission of the inmate. *Jensen v. Klecker*, 648 F.2d 1179, 1182 (8th Cir. 1981); *Ramos v. Lamm*, 639 F.2d 559, 582 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981); *Guajardo v. Estelle*, 580 F.2d 748, 758-59 (5th Cir. 1978). Thus, the district court did not err in concluding that ADOC's photocopying policy, which allows the confidentiality of inmates' legal documents to be breached, denies inmates meaningful access to the courts.

7. Telephone Calls to Attorneys

In *Ching v. Lewis*, 895 F.2d 608, 609 (9th Cir. 1990), we held that "policies will not be upheld if they unnecessarily abridge the defendant's meaningful access to his attorney and the courts," and that "the opportunity to communicate privately with an attorney is an important part of that meaningful access." *See also Procnier v. Martinez*, 416 U.S. 396, 419 (1974) ("Regulations and practices that unjustifiably obstruct the availability of professional representation . . . are invalid."). Because an inmate's access to his attorney is inextricably tied to his

meaningful access to the courts,⁷ we reject Defendant's argument that to state a claim, Plaintiffs need to allege an actual instance in which their access to the courts has been impeded.

The district court correctly concluded that the restrictions on attorney telephone calls interfere with inmates' meaningful access to the courts. ADOC has not advanced any legitimate justification for its restrictions, such as the limitation of calls to issues related to a prisoner's sentence, the granting of calls according to institutional risk score as opposed to need, and the requirement that a prisoner divulge the nature of a call before it is granted.

C. Scope of Injunctive Relief

Defendants challenge the breadth of the district court's permanent injunction,⁸ arguing that it extends beyond the scope authorized by *Bounds*. It is well established that "once a right and a violation have been shown, the scope of the district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Hutto v. Finney*, 437 U.S. 677, 688 n.9 (1979) (citations omitted). While the remedy must do no more and no less than correct a particular constitutional violation, *Hoptowit v. Ray* 682 F.2d 1237, 1246-47 (9th Cir. 1982), "a federal court may order relief that the Constitution would not of its own force initially require if such relief is necessary to remedy . . . [that] violation." *Toussaint*, 801 F.2d at 1087. *See also Milliken v. Bradley*, 433 U.S. 267 (Milliken II) (1977) (upholding remedial educational programs to cure effects of

⁷ When an attorney is involved, the likelihood of a prisoner obtaining discovery, a hearing, and ultimate relief increases significantly. *See Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 Harv. L. Rev. 610, 624-25 (1979).

⁸ The permanent injunction is attached as Appendix A to this opinion.

de jure segregation even though such programs are not required under the Constitution).

We conclude that the district court did not abuse its discretion in ordering the relief set forth in its permanent injunction. At the outset, we must address what can only be characterized as the tension between the twin holdings of *Bounds*. See Michael B. Mushlin, 2 *Rights of Prisoners* 35-41 (2d ed. 1993). On the one hand, the mandate to States is to assure "meaningful access." 430 U.S. at 823. But to discharge this duty, the Court prescribed "adequate law libraries or adequate assistance from persons trained in the law." *Id.* at 828. Some circuits, including our own, have interpreted *Bounds* only to require *either* adequate law libraries or adequate legal assistance. See *Lindquist*, 776 F.2d at 885. Practically, though, because the great mass of prisoners are not sufficiently educated, such a legal access plan would still keep out of their reach meaningful access to the courts. Accordingly, in *Lindquist*, we went on to say that even though states may choose which of the two components to provide, "this is not to say that a court may never order a mixture of [the two]." *Id.* (quoting *Cepulonis v. Fair*, 732 F.2d 1, 6 (1st Cir. 1984)).

Defendants appropriately remind us that a remedy may not overly intrude into the administration of the prison system. *Touissaint*, 801 F.2d at 1087. Yet, the remedy ultimately must be "effective." *Id.* at 1086. Given that 35 percent of ADOC's inmate population cannot read English above the seventh grade level, and 14.5 percent cannot speak English, it is unrealistic to expect that meaningful access to the courts can be achieved by providing law libraries alone. The adequacy of any remedial program must turn on its effectiveness in satisfying the State's obligation to ensure meaningful access to the courts. In fashioning an effective remedy, it is within the discretion of the district court to order a combination of remedial programs.

1. Contents of Libraries

The order requiring the purchase of the Pacific Reporters and Digests is reasonable. As the district court noted, because some prisoners detained in ADOC facilities are serving time for crimes committed in a neighboring state, they will need the case law of that state, which is contained in the Pacific Reporters but not in the Arizona Reporters. In addition, in shepardizing Arizona cases, the researcher is often referred to other cases decided in the western region of the United States, warranting the inclusion of the Pacific Reporters in the libraries' inventory.

2. Physical Access

The injunction orders ADOC to allow all inmates access to the law libraries absent a showing that the inmate is a security risk. Defendants argue that under this order, an inmate must first cause harm before being denied access, thus precluding officials from taking preventive measures to maintain security. We disagree. The order seeks to prevent the arbitrary denial of access to the library, thus prison officials would be in compliance with the order if they can rationally justify a particular denial.

The order requiring the law libraries to remain open for at least fifty hours each week is reasonable. Although ADOC subsequently expanded the hours of operation, the district court found that at the time this action was filed, prisoners had insufficient time to use the libraries. See *Lindquist*, 776 F.2d at 858 ("the existence of an adequate law library does not provide for meaningful access to the courts if the inmates are not allowed a reasonable amount of time to use the library"). Given the finding of the district court, and that there is no "reasonable expectation" that the violations will not recur, see *Gluth*, 951 F.2d at 1507, the district court did not abuse its discretion in ordering expanded hours to prevent Defendants from reverting to their prior practice. Fifty hours per week does not constitute "unlimited access." See *Lindquist*, 776 F.2d

at 858. Indeed, this relief, which amounts to approximately seven hours per day, is less than the eleven hours per day ordered in *Lindquist*. *Id.*

3. Legal Assistance

Defendants erroneously assert that the injunction mandates legal assistance for all prisoners. Consistent with *Bounds*, the injunction explicitly states that legal assistance should be provided to prisoners who "because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing." Permanent Injunction at 11.

The training videotape for all the prisoners, to which Defendants object, does not constitute "legal assistance." Rather, it is a form of self-help that the district court, in its discretion, concluded would make the law library accessible to the prisoners. Defendants also have not shown any hardship that would result from making the videotape available to all the prisoners. ADOC has already ordered the tape to train the law clerks and legal assistants.

4. Library Staff

Contrary to Defendants' assertion, the injunction does not require each librarian to possess a law degree or paralegal degree. Rather, the injunction requires "professionally trained" librarians who must possess either a library science degree, law degree, or paralegal degree. Permanent Injunction at 7-8. While we express no opinion on whether the librarian should be trained in the law, at the very least, it is not unreasonable to ensure that the librarian is in fact trained for the demands of his or her job through the requirement of a library science degree and a basic knowledge of legal research.

5. Indigency Standard

The district court ordered ADOC to set the indigency standard at \$46. However, as discussed above, because

the district court did not make a specific finding as to the inadequacy of ADOC's current standard, we vacate this provision of the injunction and remand for a proper finding.

Because Plaintiffs do not challenge Defendants' objection to the order requiring ADOC to provide typewriters, we vacate that provision of the injunction (Section III.C.).

6. Photocopy Policy

Similarly, because Plaintiffs do not object to an increase of photocopying costs from five cents per page to eight cents per page, we remand this issue to the district court to determine whether the increase is justified.

We affirm the requirement that ADOC post a sign by the photocopy machine directing staff not to read inmates' legal materials. Not only does this relief fall entirely within the discretion of the district court, but Defendants also concede that it is "innocuous." Appellants' Reply Brief at 15.

7. Attorney Telephone Calls

We affirm the requirement that prisoners be allowed at least three twenty-minute phone calls per week to their attorneys. The order certainly does not ignore, as Defendants contend, ADOC's preference that such communications occur through written correspondence or in-person interviews. It is undisputed that ADOC can implement this provision at little cost since the prisoner either calls collect or pays for the calls. Furthermore, this provision can potentially save staff time because it would no longer be necessary for the staff to determine which phone calls qualify as an emergency.

D. Defendants' Failure to Preserve their Objections

Plaintiffs contend that with respect to the functions of the legal assistants, ADOC never contested the relevant

provision in the proposed order, thereby waiving its right to object after the final order was entered. However, Plaintiffs' citation of *Gluth* is inapposite because we held there that the defendants should have raised an argument on an issue when the district court entered its partial final judgment, which effectively closed that issue. 951 F.2d at 1511. Because the proposed order here does not constitute a final judgment, we reject Plaintiffs' argument that Defendants failed to preserve their objections. Moreover, in *Gluth*, despite the defendants' failure, we saw no reason to bar them from raising the issue on appeal. *Id.*

E. *Payment of the Special Master's Fees*

Defendants request that it be given an opportunity to object to the *fees*, as well as the costs and expenses of the Special Master. Plaintiffs do not oppose this request. In any event, it would be unfair to order Defendants to pay the fees without an opportunity to object. Accordingly, we remand the order of reference to the district court to incorporate Defendants' request for an opportunity to object to the fees of the Special Master.

CONCLUSION

For the foregoing reasons, we AFFIRM in part, and VACATE and REMAND in part.

APPENDIX B

[Filed Nov. 16, 1992]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. CIV 90-0054 PHX CAM.
No. CIV 91-1808 PHX CAM
(consolidated)

FLETCHER CASEY, *et al.*,
Plaintiffs,

vs.

SAMUEL A. LEWIS, *et al.*,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ACCESS TO THE COURTS

Having considered the evidence presented by the parties in this matter regarding the access to the courts issues, the Court concludes as follows:

FINDINGS OF FACT

I. Access to the Courts

A. Physical Access without access to legal materials

In a number of facilities, prisoners allowed physical access to the law library are not allowed to browse the shelves. In some facilities, general population prisoners are denied access to the shelves although they are allowed physical access to the law library. Therefore, they must

request legal materials from untrained prisoner law clerks or security officers.¹

Inmates may browse the shelves in the law library at the Rynning unit law library at Florence;² the Florence women's unit;³ Tucson;⁴ the Mohave unit and the Gila unit at Douglas.⁵ None of the inmates have access to the stacks at any of the law libraries at Perryville⁶ or the Kaibab unit at Winslow.⁷

Two lockdown facilities in Florence, SMU and CB-6, have developed "cages" that allow prisoners to sit in the law library area but prevent them from browsing the shelves.⁸ Prisoners in the "cages" at CB6 and SMU must request legal materials from an untrained law clerk.⁹

Defendants argue that vandalism problems justify denial of access to the stacks. Defendants establish that vandalism occurred to legal materials in the Perryville complex.¹⁰ However, it is not clear that this vandalism oc-

¹ Stipulation, 11/15/1991 (hereinafter "Stip."), p. 8, 6d (South unit at Florence; p. 9, 7c (Alhambra); p. 11, 9e (Kaibab unit at Winslow); p. 12, 10e (Coronado unit at Winslow); p. 13, 11e (San Juan unit at Perryville); p. 14, 12a (Santa Cruz unit at Perryville); p. 18, B.

² Doe I testimony, 12/17/1991, p. 253, lines 19-22.

³ McQuillen testimony, 12/19/1991, p. 133, lines 16-18.

⁴ Joyner testimony, 1/15/1992, p. 111, lines 3-7.

⁵ Stip., p. 10, 8e.

⁶ 1/7/1992, p. 94, lines 21-23.

⁷ Ori testimony, 1/15/1992, p. 144, lines 12-21.

⁸ Bishop testimony, 12/17/1991, p. 144, lines 24-25, p. 145, lines 1-10; Tyszkiewicz testimony, 1/7/1992, p. 154, lines 17-24.

⁹ Stip., p. 2, 1d, p. 4, e; p. 18, B.

¹⁰ Cathcart testimony, 1/7/1992, p. 94, lines 21-25, p. 95, lines 1-4; p. 95, lines 10-25, p. 96, lines 1-16; Defendants' Exhibit 834, p. 1-3.

curred because of access to the shelves. In certain facilities where prisoners have been allowed to browse the shelves, legal materials have not been stolen or damaged.¹¹ Further, there is no evidence that allowing prisoners to browse the law library shelves is the cause of missing or damaged legal materials.¹² Rather, the evidence suggests that inadequate staffing may be the cause of missing or damages legal materials.¹³

B. Denial of Physical Access to the Law Libraries

Lockdown prisoners are routinely denied physical access to the law library. Prisoners in lockdown status in most facilities have no physical access to the law library.¹⁴ In order for lockdown prisoners who are denied physical access to the law library to obtain legal materials or a legal assistant, they must send a written request ("kite") to the law library. The legal materials, if available, are sent to the prisoner in his/her lockdown cell.¹⁵ Legal materials are brought to the prisoner in lockdown by ADOC staff, a prisoner legal assistant, or a prisoner law clerk.¹⁶

Staffing, logistics, and the reluctance to mix general population prisoners with lockdown prisoners are the rea-

¹¹ Stip., p. 17, 15b; Joyner dep., p. 34, lines 14-21; Joyner testimony, 1/15/1992, p. 111, lines 3-7; Doe I testimony, 12/17/1991, p. 254, lines 1-3.

¹² Keeney dep., p. 80, lines 3-6.

¹³ Exh. 217, p. 26.

¹⁴ Keeney testimony, 1/27/1992, p. 39, lines 2-7; Wilber testimony, 11/22/1991, p. 122, lines 11-25, p. 23, lines 1-11; *see also* Stip., p. 6, 4e; p. 10, 8d; p. 11, 9f; p. 14, 12c; p. 15, 13d; p. 16, 14e; Joyner dep., p. 7, lines 23-25; Exh. 217, p. 38; Exh. 248ca.

¹⁵ Keeney testimony, 1/27/1992, p. 39, lines 2-7; Wilber testimony, 11/22/1991, p. 122, lines 18-25; Exh. 248ca; Exh. 201; Stip., p. 6, 4e; p. 10, 8d; p. 11, 9f; p. 14, 12c; p. 15, 13d; p. 16, 14e; p. 21, 8b, 9b; Exh. 216, p. 3, 6. 2.4.

¹⁶ Wilber testimony, 11/22/1991, p. 124, lines 14-18; Stip., p. 14, 12c; p. 18, b; Exh. 201; Exh. 216, p. 2, 6.1.10.

sons lockdown prisoners are generally denied physical access to the law library.¹⁷ However, despite these same concerns, prisoners in lockdown in the Rynning unit and the Women's Division in Florence are allowed physical access to the law library and are allowed to browse the shelves.¹⁸

Prisoners in lockdown experience severe interference with their access to the courts. Unless a lockdown prisoner has a pending ADOC charge or outside ("street") case pending, the prisoner is denied access to a legal assistant.¹⁹ Prisoners who are in lockdown status for less than fifteen days may be denied any access to the law library.²⁰ For example, prisoners who are in lockdown in Perryville are by policy not eligible to request legal materials unless they have been in lockdown for more than fourteen days.²¹ In many instances, prisoners in lockdown are denied law books unless they can provide an exact citation.²²

Prisoners in lockdown routinely experience long delays in receiving legal materials or legal assistance. At Perry-

¹⁷ Keeney testimony, 1/27/1992, p. 39, lines 10-25, p. 40, lines 1-3.

¹⁸ Stip., p. 5, 3d; Doe I testimony, 12/17/1991, p. 253, lines 19-20; Powell testimony, 1/7/1992, p. 266, lines 11-13.

¹⁹ McQuillen testimony, 12/19/1991, p. 130, lines 6-11; Booker testimony, 12/18/1991, p. 273, lines 20-25; p. 274, line 1; Exh. 40y.

²⁰ Exh. 794, p. 2, 5.1.5.

²¹ Cathcart dep., p. 31, lines 6-13.

²² Booker testimony, 12/18/1991, p. 270, lines 12-25, p. 271, lines 1-4; Exh. 249ji, Cathcart memo; Exh. 249kd, Cathcart memo; Joyner dep., p. 38, lines 17-19; Wilber testimony, 11/22/1991, p. 124, lines 1-6; Bishop testimony, 12/17/1991, p. 145, lines 19-25; Bartholic testimony, 12/17/1991, p. 200, lines 11-25, p. 201, lines 1-7; Exh. 19fff; Sloboda dep., p. 33, lines 9-18, *but see* Sloboda's contradictory testimony at trial: Sloboda testimony, 1/14/92, p. 107, lines 19-25, p. 108, lines 1-3.

ville, it can take several days, even weeks, for a request for legal material to get to the law library and be filled.²³ At Tucson, lockdown prisoners may wait as long as three to seven days to receive legal materials from the law library.²⁴ At Tucson, lockdown prisoners experience delays in receiving legal assistance from legal assistants.²⁵

²³ Cathcart dep., p. 27, line 25; p. 28, lines 1-5; Exh. 249ja, (waited four days to receive 5 A.R.S.); Exh. 249iz (waited eight days to receive 462 F. Supp.); Exh. 249jc (waited six days to receive 477 F. Supp.); Exh. 249jd (waited five days to receive 94 S. Ct.); Exh. 249jb (waited five days to receive 96 S.Ct.); Exh. 249je (waited nine days to receive 5 A.R.S.); Exh. 249jf (waited nine days to receive one volume of 42 USCA §§ 1983-1984); Exh. 249jj (waited six days to receive 142 Az. 2nd); Exh. 249jk (waited three days for 15 Az. 2d); Exh. 249jl (waited three days for 5 A.R.S.); Exh. 249jm (waited three days to receive 11 A.R.S.); Exh. 249jq (waited three days to receive 5 A.R.S. and a copy of Adm. Rules); Exh. 249jr (waited nine days to receive material on post-conviction remedies, three days after second request); Exh. 249js (waited ten days for 406 F. 2d); Exh. 249ju (waited eleven days for Federal Civil Judicial Procedure and Rules); Exh. 249jw (waited thirteen days for 387 F. Supp. and sixteen days for 655 F.2d 487); Exh. 249jy (waited seven days to receive 104 Ariz. 2d); Exh. 249kd (waited thirteen days to receive 154 Ariz.); Exh. 249ki (waited ten days for the Yellow Pages and the Zip Code book); Exh. 249kl (waited eleven days to receive volumes 827 and 697 of F.2d); Exh. 249iu (waited three days to receive a response to his request); Exh. 249iv (waited three days to receive 84 Federal Practice Digest 3rd); Exh. 249iw (waited nine days to receive 1989 Supplement to Rights of Prisoners).

²⁴ Joyner testimony, 1/15-1992, p. 107, lines 21-25, p. 108, lines 1-6; Exh. 40b (waited four days to receive legal materials); Exh. 40c (waited seven days to receive copies of three cases); Exh. 40d (waited three days or longer to receive a disciplinary rule book); Exh. 40s (waited four and six days, respectively, for legal materials); Exh. 40b (waited four days for legal materials).

²⁵ Exh. 40t (waited seven days for a visit from a legal assistant); Exh. 40v (received no response to his request to see a legal assistant); Exh. 40w (waited four days to receive a visit from a legal assistant); Exh. 40e (waited four days to receive a visit from a legal assistant).

Legal assistants are only sent to the lockdown unit on Monday, Wednesday and Friday nights.²⁶ At Winslow, it can take a week for a request for legal assistance to reach a legal assistant.²⁷ Legal assistants at Winslow are allowed to visit lockdown prisoners only four days a week.²⁸ At Douglas, a lockdown prisoners are denied access to legal materials and legal assistants on Fridays and Saturdays.²⁹

Prisoners in lockdown are restricted in the numbers of books they can receive and the length of time they can keep the material. It has been the practice at Perryville to allow prisoners to receive only one book at a time, to be kept for only twenty-four hours.³⁰ Lockdown prisoners at Tucson are allowed to keep legal materials for only twenty-four hours. Because of this restriction, they tend to request only one or two books at a time.³¹ Even lockdown prisoners who are intelligent, literate and legally trained are unable to do legal research under paging system that allows only one or two books at a time every couple of days. In addition, the legal assistants assigned to lockdown prisoners are not sufficiently skilled to assist them.³²

The vast majority of adult prisoners incarcerated by ADOC have no adequate means to research the law,

²⁶ Joyner testimony, 1/15/1992, p. 108, line 1.

²⁷ Johns testimony, 12/18/1991, p. 102, lines 125.

²⁸ Exh. 255cx.

²⁹ Exh. 205.

³⁰ Cathcart dep., p. 29, lines 24-25, p. 34, lines 7-16; Exh. 249iw (Rights of Prisoners); Exh. 249jc; Exh. 49jo.

³¹ Joyner testimony, 1/15/1992, p. 109, lines 20-25, p. 110, lines 4-12).

³² Wilber testimony, 11/22/1991, p. 124, lines 6-13, 25, p. 125, lines 1-22; McQuillen testimony, 12/19/1991, p. 131, lines 10-15.

crystalize their issues, present their papers in a meaningful fashion, and get them filed in court.³³

C. Illiterate or Non-English Speaking Prisoners

There are prisoners within ADOC custody who are functionally illiterate and who do not have English as their primary language. During a six month period between October 1990 and March 1991, 3,253 prisoners were tested at the reception center. Of these prisoners, 17.2% had a reading level below sixth grade and 14.5% were non-English speaking.³⁴ A system-wide study conducted in 1989 established that 35% of the adult incarcerated population had a reading level of seventh grade or below.³⁵ The trial testimony supported the conclusions of the studies and indicated that there are prisoners who are unable to research the law because of their functional illiteracy or lack of English skills.³⁶

As a result of the inability to receive adequate legal assistance, prisoners who are slow readers have had their cases dismissed with prejudice.³⁷ Other prisoners have been unable to file legal actions.³⁸

³³ Wilber testimony, 11/22/1991, p. 109, lines 14-25.

³⁴ Exh. 835.

³⁵ Exh. 272.

³⁶ Wilber testimony, 11/22/1991, p. 114, lines 12-25, p. 115, lines 1-9, p. 178, lines 1-5, p. 199, lines 3-5; McQuillen testimony, 12/16/1991, p. 115, lines 16-25, p. 116, lines 8-25, p. 133, lines 8-15; p. 128, lines 1-6; Bishop testimony, 12/17/1991, p. 117, lines 13-25, p. 118; Lines 1-25, p. 119, lines 1-11; Harris testimony, 12/18/1991, p. 218, lines 19-25, p. 246, lines 1-5; Tyszkiewicz testimony, 1/7/1992, p. 169, lines 16-20, p. 170, lines 1-18; Friego testimony, 1/9/1992, p. 76, lines 8-14, p. 79, lines 11-13, lines 21-23.

³⁷ Bartholic testimony, 12/17/1991, p. 198, lines 16-25, p. 200, lines 11-25, p. 201, lines 1-9; Exh. 956.

³⁸ Harris testimony, 12/18/1991, p. 218, lines 8-20.

D. Staffing

Many of the law libraries are staffed by security staff and prisoner law clerks.³⁹ In Tucson, there are seven legal assistants at the Santa Rita unit;⁴⁰ two clerks and thirteen legal assistants at the Cimarron unit; one clerk and one legal assistant at the Echo law library; and five law clerks and five legal assistants at the Rincon law library.⁴¹

In Florence, the law library at CB-6 has four prisoner law clerks and three legal assistants;⁴² the SMU library has three law clerks, eleven legal assistants, and one correctional security officer;⁴³ the East unit law library is staffed by one correctional security officer and two law clerks and has seven legal assistants;⁴⁴ the North unit library is staffed by a correctional security officer, two law clerks and one legal assistant;⁴⁵ and the law library at the South unit is staffed by a correctional security officer, three law clerks and nine legal assistants.⁴⁶ The law library at Alhambra is staffed only by two law clerks and two legal assistants.⁴⁷

The law library at Mohave unit at Douglas is staffed by a civilian librarian and three law clerks.⁴⁸

³⁹ Stip., p. 18, B; p. 10, 4a, 5a, 6a, 6b, 7a and 7b; Exh. 217, pp. 25, 43, 49, 65 and 67A; Keeney testimony, 1/27/1992, p. 68, lines 15-25, p. 69, lines 1-4, p. 26, lines 3-8, lines 12-17, p. 34, lines 9-22.

⁴⁰ Joyner testimony, 1/15/1992, p. 100, lines 5-6.

⁴¹ Joyner testimony, 1/15/1992, at p. 101, lines 7-11.

⁴² Stip., p. 18, B1a and b.

⁴³ Stip., p. 19, B2a, b and c.

⁴⁴ Stip., p. 20, B4a and b.

⁴⁵ Stip., p. 20, B5a and b.

⁴⁶ Stip., p. 20, B6a and b.

⁴⁷ Stip., p. 20, B7a and b.

⁴⁸ Stip., p. 21, B8a.

The law library at the Kaibab unit at Winslow is staffed by a civilian librarian, Sue Ori, and three law clerks.⁴⁹ There are five legal assistants but only two are approved to deliver legal materials to lockdown units.⁵⁰ The law library at the Coronado unit at Winslow is staffed by civilian librarians and two law clerks. There are four legal assistants.⁵¹

All the library officers at the law libraries at Perryville are assisted by the librarian at the complex law library.⁵² The head law librarian at ASPC-Perryville, Starla Cathcart, has a master of library science from Brigham Young University.⁵³ The library at the San Juan unit at Perryville is staffed by three law clerks, a correctional security officer and a librarian.⁵⁴ The law library at the Santa Cruz unit at Perryville is staffed by a correctional security officer, two law clerks and one bilingual aide.⁵⁵ The law library at the Santa Maria unit at Perryville is staffed by three prisoner law clerks and a correctional security officer. There is one approved legal assistant for general population and one for lockdown prisoners.⁵⁶ The law library at the San Pedro unit at Perryville is staffed by one correctional security officer and three law clerks. There are two approved legal assistants for disciplinary actions.⁵⁷

The law library at the Arizona Center for Women at Phoenix is staffed by two law clerks and one Department

⁴⁹ Ori testimony, 1/15/1992, p. 142, lines 11-15.

⁵⁰ Stip., p. 21, B9a and b.

⁵¹ Stip., p. 22, B10a and b.

⁵² Cathcart testimony, 1/7/1992, p. 90, lines 15-24.

⁵³ Cathcart testimony, 1/7/1992, p. 79, lines 16-25, p. 80, lines 1-16.

⁵⁴ Stip., p. 22, B11a and b.

⁵⁵ Stip., p. 22, B12a and b.

⁵⁶ Stip., p. 23, B13a and b.

⁵⁷ Stip., p. 23, B14a and b.

of Corrections employee. There are two approved legal assistants.⁶⁸

In Tucson, Bill Streit is the complex librarian.⁶⁹ The law library at the Santa Rita unit is staffed by a law librarian and three inmate clerks.⁶⁰ Ann Joyner, the law librarian at the Santa Cruz Unit at Tucson, has a Master's degree in Library Science from the University of Arizona, and a Bachelor's degree from the University of Florida.⁶¹ The Echo Unit and the Rincon Unit law libraries have full-time law librarians.⁶²

The prisoner legal assistants, law clerks, and civilian library staff are responsible for providing legal services to all prisoners in the facilities. However, law clerks and library staff can assist prisoners only by giving them the requested material from the law library stacks, whereas legal assistants can help them draft pleadings and do other legal work.⁶³ There are an insufficient number of legal assistants available to assist prisoners who need legal assistance.⁶⁴

ADOC recognizes a need for additional librarians, but requests for additional staff have been rejected.⁶⁵ There

⁶⁸ Stip., p. 23, B15a and b.

⁶⁹ Joyner testimony, 1/15/1992 p. 96, lines 7-9.

⁶⁰ Joyner testimony, 1/15/1992, p. 99, lines 11-15.

⁶¹ Joyner testimony, 1/15/1992, p. 94, lines 1-8.

⁶² Joyner testimony, 1/15/1992, p. 100, lines 17-25, p. 101, lines 1-8).

⁶³ Wilber testimony, 11/22/1991, p. 152, lines 8-16; Exh. 216 (ADC Internal Management Policy 302.11), p. 1, 5.2, p. 8, 6.12.1.3; Cathcart testimony, 1/7/1992, p. 115, line 25, p. 116, lines 1-3; Joyner testimony, 1/15/1992, p. 114, lines 17-20.

⁶⁴ Doe I testimony, 12/17/1991, p. 258, lines 13-25, p. 259, lines 1-10; Stip., p. 20, 5b; Johns testimony, 12/18/1992, p. 103, lines 24-25, p. 104, lines 1-7; Exh. 250c; Exh. 250p; McQuillen testimony, 12/19/1991, p. 123, lines 2-4, p. 124, lines 10-19; Bishop testimony, 12/17/1991, p. 111, lines 1-7.

⁶⁵ Keeney dep., p. 69, lines 15-25, p. 70, line 1; Lewis dep., p. 26, lines 3-8.

is a specific need for more library staff to assist in providing library services to prisoners in lockdown at the Perryville facility.⁶⁶

ADOC does not ensure that the law libraries or facilities have Spanish-speaking legal assistants or law clerks.⁶⁷ In many facilities there are no Spanish-speaking legal assistants or law clerks.⁶⁸ The Gila unit at Douglas; Santa Rita Unit at Tucson; CB-6 at Florence; Mohave Unit at Douglas; and the Coronado Unit at Winslow each have one bilingual law clerk.⁶⁹

At the South Unit law library at Florence there is one bilingual law clerk/legal assistant.⁷⁰ At the San Juan Unit law library at ASPC-Perryville, two of the clerks speak Spanish.⁷¹

Most of the prisoners must rely on Spanish-speaking prisoners who are not law clerks or legal assistants to assist them and their legal assistants.⁷² However, frequently these prisoners are unable to comprehend and translate legal terminology.⁷³

⁶⁶ Cathcart dep., p. 69, lines 16-20; Cathcart testimony, 1/7/1992, p. 114, lines 7-17.

⁶⁷ Friego testimony, 1/9/1992, p. 81, lines 24-25, p. 82, line 1; Joyner testimony, 1/15/1992, p. 120, lines 1-13.

⁶⁸ Johns testimony, 12/18/1991, p. 105, lines 23-25; p. 106, lines 1-11; Friego testimony, 1/9/1992, p. 75, lines 21-22; Joyner testimony, 1/15/1992, p. 100, lines 5-16; Cathcart dep., p. 13, lines 1-4; McQuillen testimony, 12/19/1991, p. 115, lines 11-12; Stip., p. 19, 3c; p. 21, 9b; p. 22, 11a and 11b; p. 23, 13a, 13b, 14a and 14b; Exh. 250c; Exh. 40t.

⁶⁹ McQuillen testimony, 12/19/1991, p. 114, lines 12-16, p. 115, lines 1-10; Sloboda testimony, 1/14/1992, p. 92, lines 3-7, lines 13-15; Joyner testimony, 1/15/1992, p. 100, lines 7-16; Stip., p. 21, B8a, p. 22, B10a.

⁷⁰ Stip., p. 20, B6b.

⁷¹ Stip., p. 22, B11a.

⁷² Friego testimony, 1/9/1992, p. 82, lines 5-19; McQuillen testimony, 12/19/1991 p. 115, lines 16-21; Stip., p. 19, 3c.

⁷³ McQuillen testimony, 12/19/1991, p. 115, lines 16-25, p. 116, lines 1-3.

E. Training of staff and inmates

1. Qualifications for inmate legal assistants

In most facilities prisoners apply to the warden to become legal assistants.⁷⁴ These prisoners are not required to meet any specific knowledge or performance requirements pertaining to legal research prior to being approved for the legal assistant position.⁷⁵ Perryville and the Santa Rita Unit at Tucson are the only facilities that have developed tests for prisoners seeking to be law clerks.⁷⁶ However, the tests are not given to all prisoners who apply to be law clerks⁷⁷ and evaluate only the prisoner's knowledge of the library collection but do not test actual research skills, legal analysis and legal writing.⁷⁸

2. Training for inmate legal assistants

The legal assistants and law clerks frequently are not sufficiently skilled to provide prisoners adequate legal services.⁷⁹ ADOC has no training program for prisoners or civilians who provide legal services, with the exception of the court-ordered training in the Florence Central Unit [*Gluth*] and a training program that was developed in July 1990 at the Complex law library in Tucson, a pro-

⁷⁴ Exh. 216, p. 6, 6.9.4.

⁷⁵ Exh. 790, Policy Receipt Newsletter, dated 3/14/91, p. 1, 5.3.

⁷⁶ Cathcart testimony, 1/7/1992, p. 90, Line 25, p. 91, lines 1-2; Joyner testimony, 1/15/1992, p. 101, lines 20-25, p. 102, Lines 1-11.

⁷⁷ Cathcart dep., p. 21, lines 14-23; Joyner testimony, 1/15/1992, p. 112, lines 9-11, p. 113, lines 1-4.

⁷⁸ Joyner testimony, 1/15/1992, p. 113, lines 12-18; Cathcart testimony, 1/7/1992, p. 94, lines 8-11.

⁷⁹ McQuillen testimony, 12/19/1991, p. 128, lines 1-7, p. 129, lines 4-15; Tyszkiewicz testimony, 1/7/1992, p. 185, lines 10-20; Bishop testimony, 12/17/1991, p. 117, lines 13-25, p. 118, lines 1-25, p. 148, lines 17-19; Johns testimony, 12/18/1991, p. 105, lines 7-22; Cathcart testimony, 1/7/1992, p. 108, lines 1-11; Wilber testimony, 11/22/1991, p. 155, lines 3-9; Exh. 217, p. 50.

gram that has not been implemented in all the units in Tucson.⁸⁰ Inmate legal assistants at Tucson were provided an eighteen and a half hour training program by the Department of Corrections.⁸¹ Some of the inmate legal assistants at SMU in Florence have gone through the legal training program offered at the Central Unit pursuant to the *Gluth* decision.⁸² After the filing of this lawsuit, ADOC promulgated a plan to provide law clerks and legal assistants training in the law, but later rescinded the policy.⁸³

Paralegal courses are available for inmates through correspondence or closed circuit television.⁸⁴ Although some law clerks or legal assistants have taken a paralegal correspondence course, there is no system in place to evaluate their work.⁸⁵

Law clerks and legal assistants should be required to take a training course that includes classroom hours in legal research and courses in the substantive law relevant

⁸⁰ Keeney dep., p. 77, lines 12-14, lines 22-24; McQuillen testimony, 12/19/1991, p. 113, lines 7-16, p. 120, lines 21-23; Booker testimony, 12/18/1991, p. 282, lines 11-19; Doe I testimony, 12/17/1991, p. 253, lines 2-4, Cathcart testimony 1/7/1992, p. 108, lines 1-11; Joyner testimony, 1/15/1992, p. 101, lines 23-25, p. 102, lines 1-25, p. 103, lines 1-11, p. 112, lines 9-25, p. 113, lines 1-9, p. 120, lines 3-6; Friego testimony, 1/9/1992, p. 79, lines 6-10; Stip., p. 18, B; p. 12, 9.G; Exh. 200.

⁸¹ Wilbur testimony, 11/22/1991, p. 184, lines 4-5, lines 14-18, p. 185, lines 11-12.

⁸² Tyszkiewicz testimony, 1/7/1992, p. 184, lines 20-25, p. 185, lines 1-4.

⁸³ Lewis dep., p. 66, lines 19-23; Keeney dep., p. 86, lines 4-19; Exh. 50, Executive Staff Meeting Minutes, 6/25/90, p. 4; 7/16/90, p. 2; Exh. 216, 5.3; Exh. 785 5.5.3. and 6.9.2; Exh. 790, Policy Receipt Newsletter, #91-16, dated 3/14/91, p. 1.

⁸⁴ Tyszkiewicz testimony, 1/7/1992, p. 185, lines 13-14, p. 186, lines 20-21.

⁸⁵ Friego testimony, 1/9/1992, p. 79, lines 7-10; Joyner testimony, 1/15/1992, p. 120, lines 3-6.

to prisoners' needs, such as the disciplinary process, warrants, detainers, collateral attacks and civil procedure.⁸⁶ Thus, the eighteen-and-a-half-hour training program provided certain legal assistants in Tucson is insufficient training.⁸⁷

3. Qualifications and training for staff

In order for library staff to provide prisoners with adequate law library services, all of the library staff must be trained in the law.⁸⁸ There is no training provided civilian or security library staff other than that provided in the Central Unit pursuant to *Gluth*.⁸⁹ Although some librarians have training in library science, this is not a requirement. Also, staff is not required to have training in legal research.⁹⁰

F. Contents of the law libraries

The defendants do not assure that library inventories are updated and self-help manuals and other needed legal materials are available to prisoners. There is no one in ADOC who is responsible for monitoring law libraries statewide.⁹¹

The standard library collection that would comply with the "Muecke List" contains at least the United States Code Annotated; Supreme Court Reporter; Federal Reporter Second; Federal Supplements; Shepards U.S. Cita-

⁸⁶ Wilber testimony, 11/22/1991, p. 153, lines 19-25, p. 154, lines 1-9.

⁸⁷ Wilber testimony, 11/22/1991, p. 197, lines 3-11.

⁸⁸ Exh. 217, p. 25, pp. 26-27, p. 35, 2, p. 50, p. 51, p. 54 2, p. 55, p. 67.

⁸⁹ Powell testimony, 1/7/1992, p. 268, lines 17-25, p. 269, lines 1-4; Exh. 217, p. 26-27.

⁹⁰ Keeney testimony, 1/27/1992, p. 33, lines 12-19, p. 68, lines 15-25, p. 69, lines 1-4; Exh. 217, p. 25.

⁹¹ Keeney dep., p. 83, lines 13-19; Cathcart dep., p. 11, lines 9-14.

tions; Shepards Federal Citations; Local Rules for the Federal District Court; Modern Federal Practice Digests; Federal Practice Digest (Second); Arizona Code Annotated; Arizona Reports; Shepards Arizona Citations; Arizona Appeals Reports; Arizona Law-of Evidence (Udall); ADC Policy Manual; 108 Institutional Management Procedures; Federal Practice and Procedure (Wright); Corpus Juris Secundum and Arizona Digest. (Defendants' Exhibit- 785, p. 1; see also, *Wilkinson v. MacDougall*, CIV 81-1397, (Jan. 5, 1984)).

Although defendants now have the "Muecke list"⁹² in most the law libraries statewide, a number of libraries had volumes that were not updated.⁹³ In the Alhambra law library, there was no Shepard's United States Citations 1991 supplement.⁹⁴ In the CB-6 law library, Corpus Juris Secundum was missing pocket parts in various volumes.⁹⁵ In the ACW law library, Federal Practice Digest 3rd and the Arizona Law of Evidence were not current.⁹⁶ At the Santa Maria law library, the Modern Federal Practice Digest was unavailable.⁹⁷ The defendants opened the Rynning Unit in May 1991, but by December 16, 1991 they still did not have certain books required by the *Muecke* list.⁹⁸

Prisoners need additional materials to conduct legal research. Specifically, prisoners need self-help manuals that direct them on substantive and procedural issues to help

⁹² The *Muecke* list is a list of legal books that are required to be in the Central Unit law library. *Wilkinson v. McDougal*, Civ. 81-1397 PHX CAM; See also Exh. 217 p. 27.

⁹³ Stip., p. 2, Ia.

⁹⁴ Stip., p. 9, 7.F.

⁹⁵ Stip., p. 3, Alg.

⁹⁶ Stip., 17, 15f.

⁹⁷ Stip., p. 16, g.

⁹⁸ Doe I testimony, 12/17/1991, p. 252, lines 2-8, p. 254, lines 9-25, p. 2, lines 2-3.

them do legal work.⁹⁹ However, not all of the facilities have self-help manuals. Prisoners had occasion to use self-help manuals because they were the personal property of the law clerk.¹⁰⁰ Legal assistants find they need, but often do not have, Pacific Second to review a case discovered through the shepardizing of an Arizona case; immigration material; and post-conviction manuals.¹⁰¹ Many prisoners are confronted with immigration issues, particularly deportation detainees.¹⁰²

Some of the libraries including Perryville, SMU, CB-6, the East unit, the North unit and the women's unit at Florence; the Santa Rita Unit at Tucson; the Mohave unit and Gila units at Douglas; and the Kaibab unit at Winslow contain self-help litigation manuals including the supplementary pamphlet or the 1983 edition of the *Prisoner's Self-Help Litigation Manual*.¹⁰³ Some of the libraries including Perryville contain the Pacific Second series.¹⁰⁴

Facility administrators have removed from the law libraries legal materials that are not on the "Muecke list."¹⁰⁵

⁹⁹ Bishop testimony, 12/17/1991, p. 148, lines 1-25; Doe I testimony, 12/17/1991, p. 256, lines 22-25, p. 257, lines 1-5; McQuillen testimony, 12/19/1991, p. 116, lines 15-21, p. 117, lines 24-25, p. 118, lines 1-11, p. 128, lines 8-25; Tyszkiewicz testimony, 1/7/1992, p. 156, lines 7-12; Wilber testimony, 11/22/1991, p. 167, lines 8-25; p. 168, lines 1-2.

¹⁰⁰ Doe I testimony, 12/17/1991, p. 266, lines 16-23.

¹⁰¹ Doe I testimony, 12/17/1991, p. 256, lines 7-13; Bishop testimony, 12/17/1991, p. 149, lines 1-21; McQuillen testimony, 12/19/1991, p. 119, lines 8-18.

¹⁰² McQuillen testimony, 12/19/1991, p. 119, lines 5-16.

¹⁰³ Cathcart testimony, 1/7/1992, p. 98, lines 3-18; Tyszkiewicz testimony, 1/7/1992, p. 153, lines 2-7; Joyner testimony, 1/15/92, p. 110, lines 16-18; Stip., p. 3, lines 13-17, p. 5, lines 11-15, p. 7, lines 10-14; p. 10, lines 25-26; p. 11, lines 3-6, p. 11, lines 25-26; p. 12, lines 7-9.

¹⁰⁴ Cathcart testimony, 1/7/1992, p. 98, lines 3-18.

¹⁰⁵ McQuillen testimony, 12/19/1991, p. 120, lines 1-11; Friego testimony, 1/9/1992, p. 80, lines 3-20.

G. Legal supplies/Indigency standard

ADOC's indigency standard prevents prisoners from purchasing necessary legal supplies. The ADOC policy regarding indigency, set forth in Policy 302.11, provides that a prisoner is not provided basic legal supplies at ADOC expense if, at any time during the previous thirty-day period, the prisoner's account balance exceeded twenty-two dollars.¹⁰⁶ ADOC makes no individual evaluation of what the prisoner purchased during the previous thirty-day period in order to assess whether or not the prisoner has a valid need for indigency status.¹⁰⁷ The twenty-two dollar standard was not based on a comparison of the actual average monthly consumption of basic general supplies, including hygiene items and legal supplies, and their cost. Rather, the standard was arrived at by applying an inflation factor to the fourteen-year-old twelve-dollar standard.¹⁰⁸

If the prisoner is granted indigency status and receives legal supplies, the prisoner's account is debited the amount of the legal supplies and the debit is held against the account until funds are available in the prisoner's account to pay off the debt.¹⁰⁹

If the prisoner is denied indigency status, he or she cannot reapply until thirty days after the date his or her account went above the indigency standard.¹¹⁰ Further, Prisoners must reapply for indigency status whenever they are transferred to another facility.¹¹¹

Under the twenty-two dollar standard, if a prisoner purchases basic hygiene and general supplies, such as

¹⁰⁶ Exh. 216, ADC policy no. 302.11, § 6.14.1.

¹⁰⁷ McFadden testimony, 1/8/1992, p. 137, lines 1-5.

¹⁰⁸ Keeney testimony, 1/27/1992, p. 42, lines 21-25, p. 43, lines 1-21.

¹⁰⁹ Exh. 50, Executive staff Meeting Minutes, ASPC-T, 1/20/89.

¹¹⁰ McFadden testimony, 1/8/1992, p. 135, lines 5-13.

¹¹¹ Exh. 790, p. 2, § 5.4.

coffee, that prisoner is unable to purchase needed legal supplies.¹¹² A prisoner could spend twenty dollars on basic supplies.¹¹³ It is not unusual for a prisoner to spend twenty-four dollars at the prison store.¹¹⁴

The appropriate indigency standard cannot be determined without evaluating the actual cost of basic necessities and legal supplies.¹¹⁵ A recent study of the actual cost and prisoner consumption of basic supplies at the Central unit in Florence, resulted in the establishment of a forty-six dollar indigency standard. *Gluth v. Kangas*, 773 F. Supp. 1309, 323 (D. Ariz. 1988), *aff'd*, 951 F.2d 1504 (1991).

H. Photocopy Policy

ADOC's photocopy policy does not ensure that the substance of prisoners' confidential legal materials are not read by other prisoners or staff. Prisoners or library staff photocopy prisoners' confidential legal materials.¹¹⁶ For example, at SMU at Florence, legal documents are copied by putting them under the cell door. An officer will pick up the document and copies will be received back in two to three days.¹¹⁷ Alternatively, an inmate at the law library may request copies. An officer scans the material for the contraband, then an inmate clerk copies the materials.¹¹⁸ In a few units including Perryville, Rynning at Florence and Santa Rita at Tucson, those inmates al-

¹¹² Bishop testimony, 12/17/1991, p. 154, lines 4-21.

¹¹³ McFadden testimony, 1/8/1992, p. 136, lines 3-14.

¹¹⁴ McFadden testimony, 1/8/1992, p. 135, lines 1-3.

¹¹⁵ Wilber testimony, 11/22/1991, p. 169, lines 1-9.

¹¹⁶ Joyner dep., p. 29, lines 1-2; Ori testimony, 1/15/1992, p. 145, lines 9-15; Cathcart dep., p. 40, lines 10-11; Exh. 283, attachment 301.11.; MU, p. 5, § 5.7.3; Exh. 295; Stip., p. 21, § 7d.

¹¹⁷ Bishop testimony, 12/17/1991, p. 151, lines 8-19.

¹¹⁸ Tyszkiewicz testimony, 1/7/1992, p. 162, lines 17-25, p. 163, lines 1-25, p. 164, lines 1-9.

lowed into the library may watch their copies being made.¹¹⁹ Prisoners have observed people reading prisoners' legal documents while copying them.¹²⁰

In addition, the opportunity to breach the confidentiality of legal documents is increased by the delays in receiving photocopies. Prisoners in lockdown in Perryville may wait as long as nine days to have legal materials photocopied. Photocopies in general may take one to two full days.¹²¹ There is a need for posting a policy by the photocopier which states that ADOC civilian or prisoner staff shall not read the substance of a prisoner's confidential legal papers that have been submitted for photocopying.¹²²

I. Attorney/client phone calls

Defendants interfere with prisoners' ability to make confidential attorney-client telephone calls. Prisoners are arbitrarily denied confidential attorney-client telephone calls by restrictive ADOC policies and procedures. If prisoners do not have an attorney of record, they must have court papers that verify that they are representing themselves and have filed an action with the court.¹²³ Prisoners with an attorney of record must substantiate a need for telephonic communication with that attorney or the attorney's agent that cannot be met by utilizing the mail or attorney visitation. Prisoners are advised that calls should be requested and will only be approved in response

¹¹⁹ Cathcart testimony, 1/7/1992, p. 102, lines 13-25, p. 103, lines 1-3; Powell testimony, 1/7/1992, p. 265, lines 16-25; Joyner testimony, 1/15/1992, p. 108, lines 7-21.

¹²⁰ Bishop testimony, 12/17/1991, p. 151, lines 20-25.

¹²¹ Exh. 249kb, memo dated 9/21/1990; Stip., p. 16, § 14d.

¹²² Wilber testimony, 11/22/1991, p. 170, lines 5-13.

¹²³ Exh. 212, p. 3, § 4.4; Exh. 202, p. 3, § 4.4; Exh. 262ds; Exh. 214, Nicholas Cortez, 33601, 1/8/91; Exh. 260ff.

to legitimate pressing legal issues with short time parameters, such as a court-ordered deadline.¹²⁴ If prisoners have not filed an action pro se, or do not have an attorney of record, they are unable to interview a prospective attorney by telephone.¹²⁵

The Correctional Program Officers (CPO) may deny prisoners confidential attorney-client calls because the staff is too busy or because the staff makes a determination that the prisoner's need for a confidential attorney-client call can be handled by written correspondence or by attorney-client visitation.¹²⁶ The CPO is not required to justify in writing a decision to deny a prisoner confidential attorney-client call.¹²⁷

Further, there is no policy requiring a staff person to leave the room while a prisoner is attempting to make a confidential attorney-client call, even when the staff person is able to view the prisoner through a window.¹²⁸ CPOs have refused to leave the room and have remained within hearing range while a prisoner is attempting to make a confidential attorney-client call, even when the staff person is able to view the prisoner through a window.¹²⁹

¹²⁴ Exh. 213, p. 3, § 5.13, 15-13-1; Exh. 214 (form designating attorney of record); Keeney testimony, 1/27/1992, p. 40, lines 20-24; Keeney dep., p. 37, lines 1-7; Exh. 799, p. 4, § 5.3, 5.3.1.2; Exh. 283, attachment ADC-ASPC C-F, SMU, IMP 302.11, p. 4, § 5.7.3; Tyszkiewicz testimony, 1/7/1992, p. 171, lines 21-24; Exh. 207, § 5.1.2, 5.1.2.4, 5.1.2.6; Exh. 209, attachment #1; Exh. 262dr; Exh. 262et; Exh. 214, Jack Barret #55143, 11/15/90, and James Johnson, 11/20/90.

¹²⁵ Booker testimony, 12/18/1991, p. 277, lines 10-15.

¹²⁶ Keeney dep., p. 37, lines 1-7; Keeney testimony, 1/27/1992, p. 41, lines 1-6; Exh. 243adb; Exh. 66qq.

¹²⁷ Keeney dep., p. 37, 13-18.

¹²⁸ Keeney dep., p. 85, lines 1-25; Keeney testimony, 1/27/1992, p. 42, lines 8-12.

¹²⁹ Keeney dep., p. 85, lines 1-25; Keeney testimony, 1/27/1992, p. 41, lines 20-25, p. 42, lines 1-12; Exh. 244aaf; Booker testimony 12/18/1991, p. 278, lines 1-8, p. 279, lines 8-25; Coley testimony,

ADOC's official policy is based on the belief that the primary means of communication between a prisoner and his attorney should be by written correspondence. Yet, ADOC realizes that prisoners have other issues besides court deadlines necessitating a call to an attorney.¹³⁰ The primary reason ADOC requires justification for a confidential attorney-client call is because the call takes some staff time and the prisoner is using a state phone.¹³¹

Because the Central Office policies provide few objective guidelines for determining when a request for a call should be granted or denied,¹³² facilities and individual staff have developed different policies or procedures, many of which interfere with the right to have confidential telephone contact with an attorney or the attorney's agent.¹³³ The CB-6 policy limits the reasons for an attorney-client call to issues related to a prisoner's sentence.¹³⁴ At SMU, a prisoner's institutional risk score, not his need, will determine how often he is allowed legal call.¹³⁵ At the Central unit in Florence, limitations have been placed on the number of telephone calls prisoners can make per week. Prisoners were allowed one call per week in 1989¹³⁶ and two calls per week in 1990.¹³⁷ No distinction is made between attorney and non-attorney calls.¹³⁸ At the Perryville facility and the Cimarron unit at Tucson, the pris-

12/19/1991, p. 104, lines 2-3, p. 105-106, lines 1-7; Wilber testimony, 11/22/1991, p. 160, lines 12-15; p. 161, lines 12-15.

¹³⁰ Keeney testimony, 1/27/1992, p. 40, lines 20-24.

¹³¹ Keeney testimony, 1/27/1992, p. 41, lines 4-8.

¹³² Wilber testimony, 11/22/1991, p. 160, lines 1-6.

¹³³ Wilber testimony, 11/22/1991, p. 160, lines 1-6.

¹³⁴ Exh. 799, § 4.4.

¹³⁵ Exh. 43x, *see* SMU Orientation Package, p. 2.

¹³⁶ Exh. 262dy.

¹³⁷ Exh. 262ep.

¹³⁸ Exh. 262dx.

oner must tell the CPO the exact nature of the call before the confidential attorney-client call is granted.¹³⁹

Prisoners who cannot satisfy staff that they have need for a confidential attorney-client phone call are forced to speak to their attorney on monitored telephones.¹⁴⁰ This policy significantly diminishes the ability of prisoners to have access to the courts because they are unable to have confidential attorney-client calls.¹⁴¹

II. Post-Filing Changes

The defendants made the following changes relevant to the access to the courts issues after the filing of this lawsuit. A number of the law libraries throughout the state did not have the complete "Muecke list" until after this lawsuit was filed.¹⁴² Further, some facilities had no law library or a limited "resource" library prior to the filing of the lawsuit.¹⁴³

¹³⁹ Coley testimony, 12/19/1991, p. 109, lines 9-17; Exh. 207, § 5.1.1; Exh. 214, Booker #42595, 8/6/90, King #37415, 12/24/90, Burks #80338, 12/17/90, Parker #50912, 2/28/90.

In one instance at the North Unit in Florence, a prisoner who provided ADOC staff with all essential information including an attorney telephone number and evidence of a court deadline and who attempted to arrange the call 48 hours in advance was denied the call because he refused to reveal the exact nature of the problem. Exh. 260gg.

¹⁴⁰ Wilber testimony, 11/22/1991, p. 160, lines 1-11; Celaya testimony 12/17/1991, p. 54, lines 22-25, p. 55, lines 9-20, p. 57, lines 13-19, p. 58, lines 1-5.

¹⁴¹ Wilber testimony, 11/22/1991, p. 163, Lines 4-10.

¹⁴² Exh. 50, Library Inventories, 6/25/90, p. 4; Keeney dep., p. 28, lines 1-25, p. 29, lines 9-19; McQuillen testimony, 12/19/1991, p. 116, lines 8-14.

¹⁴³ Exh. 279, ASPC-PV Warden's meeting minutes, 9/11/30; McQuillen test., p. 113, lines 1-3; Cathcart testimony, p. 111, lines 23-25.

The defendants expanded the law library hours at a number of institutions after the lawsuit was filed.¹⁴⁴ Prior to the expansion of law library hours, prisoners had insufficient time in the law libraries.¹⁴⁵

The defendants also increased the indigency standard or legal access from \$12.00 per 30 days to \$22.00 per 30 days effective March 15, 1991.¹⁴⁶

CONCLUSIONS OF LAW

I. Access to the Courts

Prisoners have a constitutional right of access to the courts that is adequate, effective and meaningful. *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72 (1977). This right of access to the courts "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds*, 430 U.S. at 828, 97 S.Ct. at 1498. "It is the state's burden to provide meaningful access and to demonstrate that its chosen method is adequate." *Gluth v. Kangas*, 951 F.2d 1504, 1508 (9th Cir. 1991), citing *Storseth v. Spellman*, 654 F.2d 1349, 1352 (9th Cir. 1981). Prisoners alleging interference with their access to the courts need not allege "actual injury" if one of the core requirements under *Bounds* is involved. *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989). Adequacy of legal assistance is such a core requirement. *Id.*

The prison may preclude physical access to segregated inmates if such access would interfere with institutional

¹⁴⁴ Exh. 50, Executive Staff Meeting Minutes, dated 11/13/1990, p. 4, Exh. 216, effective March 15, 1991, p. 3, § 6.2.3; Exh. 231.

¹⁴⁵ Exh. 279, Warden's minutes, ASPC-PHX, August 1, 1989; Exh. 250r; Exh. 252k; Stip., p. 4, 2d, p. 15, 13d.

¹⁴⁶ Exh. 216, p. 9, § 6.14.1, Keeney testimony, 1/27/1992, p. 42, lines 13-25, p. 43, lines 1-8.

security.¹⁴⁷ *Toussaint v. McCarthy*, 801 F.2d 1080, 1109 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069, 107 S.Ct. 2462, 95 L.Ed.2d 871 (1987). *See also*, *Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990); *Lindquist v. Idaho St. Bd. of Corrections*, 776 F.2d 851, 858 (9th Cir. 1985). However, if the state denies physical access to the law library, the state must provide that prisoner with legal assistance. *Toussaint*, 801 F.2d at 1110. The *Bounds* court listed several alternatives to physical access including the training of inmates as paralegal assistants to work under lawyers' supervision, the use of paraprofessionals and law students, volunteer attorneys, or staff attorneys working with prisoner legal assistance organizations. *Bounds*, 430 U.S. at 831, 97 S.Ct. at 1499-1500. The legal access program need not include these particular elements but must be evaluated as a whole. *Bounds*, 430 U.S. at 831, 97 S.Ct. at 1499-1500. "*Bounds* requires, in the absence of adequate law libraries, 'some degree of professional or quasi-professional legal assistance to prisoners.'" *Gluth*, 951 F.2d at 1511.

A "paging system," in which a prisoner who is denied direct access to the law library is allowed to request that legal materials be brought to his or her cell, does not provide adequate access to the courts. In *Toussaint*, the Ninth Circuit accepted the prisoners' contention that a paging system that allowed a prisoner to order five books per week was constitutionally deficient:

Simply providing a prisoner with books in his cell, if he requests them, gives the prisoner no meaningful change [sic] to explore the legal remedies that he might have. Legal research often requires browsing through various materials in search of inspiration; tentative theories may have to be abandoned in the course of research in the face of unfamiliar adverse

¹⁴⁷ Generalized security concerns are insufficient to support a denial of physical access to the law library. *DeMallory v. Cullen*, 855 F.2d 442, 448 (7th Cir. 1988).

precedent. New theories may occur as a result of a chance discovery or an obscure or forgotten case. Certainly a prisoner, unversed in the law and the methods of legal research, will need more time or more assistance than the trained lawyer exploring his case. It is unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult.

Toussaint, 801 F.2d at 1109-10, quoting *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978), *cert. denied*, 441 U.S. 911 (1979). *See also* *Griffin v. Coughlin*, 743 F. Supp. 1006, 1019-25 (N.D.N.Y. 1990) (paging system that allows two books a day is inadequate).

Untrained prisoner legal assistants cannot provide constitutionally sufficient access to the courts for prisoners denied access to a law library. *Gluth*, 951 F.2d at 1508.¹⁴⁸ "*Bounds* requires the assistance of those 'trained' in the law; the appearance of minimal capacity to assist other inmates alone plainly does not suffice." *Gluth*, 951 F.2d at 1508. Although legal training need not be extensive, *Bounds* does require that inmates be provided the legal assistance of persons with at least some training in the law." *Gluth*, 951 F.2d at 1511.

Moreover, even the best law library is of no use to prisoners who are functionally illiterate in English. *Cruz v. Hauck*, 627 F.2d 710, 721 (5th Cir. 1980). Library books, even if adequate in number, cannot provide access to the courts for those persons who do not speak English or who are illiterate. *Id.* *See also*, *Valentine*, 850 F.2d at 957; *U.S. ex rel. Para-Professional Law Clinic v. Kane*,

¹⁴⁸ *See also*, *Valentine v. Beyer*, 850 F.2d 951, 956-57 (3rd Cir. 1988); *DeMallory*, 855 F.2d at 447; *Walters v. Thompson*, 615 F. Supp. 330, 340 (D.C.Ill. 1985); *Cody v. Hillard*, 599 F.Supp. 1025, 1061 (D.S.D. 1984); *Canteriono v. Wilson*, 562 F.Supp. 106, 110-111 (W.D.Ky. 1983); *Wade v. Kane*, 448 F.Supp. 678, 683 (E.D. Penn. 1978).

656 F. Supp. 1099, 1105-07 (E.D. Pa. 1987), *aff'd without opinion*, 835 F.2d 285 (3d Cir. 1987); *cert. denied nom. Zimmerman v. Para-Professional Law Clinic*, 485 U.S. 993 (1988); *Cody*, 599 F. Supp. at 1061; *Caterino*, 562 F.Supp. at 110.

Meaningful access to the courts requires direct assistance for prisoners who because of language factors or lack of access to the law library, or for other reasons are unable to perform adequate legal research and writing. In the absence of a program providing such prisoners with lawyers or paralegals, ADOC must maintain a sufficient number of at least minimally trained prisoner legal assistants. *Gluth v. Kangas*, 773 F. Supp. 1309, 1318-19 (D. Ariz. 1988), *aff'd*, 951 F.2d 1504 (9th Cir. 1991). In *Gluth*, this Court ordered [for the Central Unit in Florence] the development of a legal research and writing course that must be successfully completed by all legal assistants. The work of legal assistants was to be supervised on a continuing basis by the legal research instructor. *Gluth*, 773 F.Supp. at 1319-20. Clearly, the law requires for those prisoners denied physical access to the law libraries [either because they are in lockdown, illiterate or non-English speaking or are denied access to the books within the law libraries] the defendants must provide trained legal assistants. The evidence in this case establishes that the legal assistants provided by the ADOC are not trained sufficiently to meet the *Bounds* requirements. Locked down, illiterate or non-English speaking inmates must rely on an inadequate number of inmate clerks with no formalized training or supervision by attorneys. Such a system fails to comply with the requirements of *Bounds*. *Valentine*, 850 F.2d at 956-57.

II. Law library staffing

To provide adequate access to the courts, a law library must be staffed by a person with adequate legal training; a law library staffed only by security officers untrained

in legal research and writing is not sufficient.¹⁴⁰ Therefore, this court in *Gluth* [Central Unit in Florence] ordered defendants to provide at least one full-time professionally trained librarian at the Central Unit law library, as well as adequate secretarial support. *See Gluth*, No. CIV 84-1626-PHX-CAM, Order, July 9, 1991, p. 4; *See also Peterkin v. Jeffes*, 855 F.2d 1021, 1038 (3rd Cir. 1988) (death row prisoners who are denied direct access to law library must have assistance from attorneys for post-conviction and civil rights filings); *Valentine*, 850 F.2d at 956 (prisoner paralegals who are not provided continuing legal education cannot provide adequate access to prisoners who were denied direct access to law library); *Carter v. Fair*, 786 F.2d 433, 434 (1st Cir. 1986) (meaningful access provided where attorneys were available to prisoners who were denied direct library access). The Court also ordered that prisoner law library clerks, in order to perform their duties adequately, must successfully complete the same legal research course as prisoner legal assistants. *Gluth*, 773 F. Supp. at 1318.

III. Indigent Standard/Supplies

Indigent prisoners must be provided sufficient legal supplies and services to ensure meaningful access to the courts. *Bounds*, 430 U.S. at 824. A policy which forces inmates to choose between purchasing hygienic supplies and essential legal supplies is unacceptable. *Gluth*, 951 F.2d at 1508.

In *Gluth*, this Court ordered that a prisoner in the Central Unit in Florence is eligible for basic legal supplies and services if he has less than \$46.00 in his account at the time of the request. *Gluth*, 773 F. Supp. at 1324. The Ninth Circuit affirmed, noting that "[t]he

¹⁴⁰ Indeed, defendants themselves concede this. For example, in a memo dated October 30, 1989, J. C. Keeney, Assistant Director for Adult Institutions, directed that "[e]ach library shall have a trained librarian." Exhibit 1 to Keeney dep.

uncontroverted facts show that it costs at least \$46 to purchase necessary personal items and legal supplies and that inmates must purchase hygiene items to avoid punishment under prison regulations." *Gluth*, 951 F.2d at 1508.

In this case, the ADOC established the \$22 indigency standard by applying an inflation factor to the 14-year old \$12 standard.¹⁵⁰ The standard is not based on actual costs of hygiene items. Under this \$22 standard, a prisoner cannot purchase both hygiene items and legal supplies. Clearly, the \$22 standard is insufficient to insure that indigent prisoners receive sufficient legal supplies.

IV. Contents of the law libraries

After the filing of this action, the defendants expanded their resources in the law libraries. Generally, the facilities appear to have complete libraries.¹⁵¹ Some of the libraries contain, and all of the libraries should contain, copies of prisoner self-help manuals. Without self-help manuals, prisoners who are untrained in the law cannot use the legal books in the libraries and the defendants have not provided "meaningful" access to the courts. It also appears that the Pacific Digest and Reporters may be necessary for the inmates to pursue their cases.

V. Photocopy Policy

Because the photocopy policies allow staff or other inmates to photocopy a prisoner's confidential legal information, the confidentiality of legal documents is breached

¹⁵⁰ The Court notes that inmates are not given supplies. The cost of the supplies is debited to the inmates' accounts. Thus, if the inmate ever has money deposited to the account, ADOC recovers the cost of the legal supplies.

¹⁵¹ The Court takes judicial notice of the fact that this federal court donates to the Arizona prison system its advance sheets, paperback reporters and older editions of books to help lower costs for the state prison system.

by staff or other inmates. Staff, who may be named defendants in civil rights actions, have access to confidential legal materials of inmates. For these reasons, the prison needs a policy to assure that legal documents to be photocopied remain confidential and are not read by other inmates or staff.

VI. Legal telephone calls

Prisoners must have a reasonable opportunity to seek and receive the assistance of attorneys for civil as well as criminal matters. Therefore, regulations and practices that unjustifiably restrict the availability of professional representation are invalid. *Procunier v. Martinez*, 416 U.S. 396, 419, 94 S.Ct. 1800, 1814-15, 40 L.Ed.2d 224 (1974) (ban on attorneys' use of paralegals and law students to interview prisoners). Reasonable access to telephones is an important component of a prisoner's right of access to courts and counsel. See *Divers v. Department of Corrections*, 921 F.2d 191, 194 (8th Cir. 1990) (allegation that prisoners were permitted to telephone an attorney only if they had a court appearance within 30 days stated a claim); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1052 (3th Cir. 1989) (allowing prisoners only one attorney call every two weeks, and counting calls as made when the attorney was not reached, is "patently inadequate"). "[T]he ability of counsel to visit the jail cannot always compensate for an inmate's initial inability to ask an attorney to visit. Worse yet, inmates who have not yet retained an attorney are obviously prejudiced if they can only make one call during business hours every two weeks." *Johnson-El*, 878 F.2d at 1052.

Moreover, effective access to attorneys in the prison context requires that the traditional privacy of the attorney/client relationship be protected. See *Ching v. Lewis*, 895 F.2d 608, 609 (9th Cir. 1990) ("The opportunity to communicate privately with an attorney is an important part of meaningful access to the courts."). "Forcing pris-

oners to conduct their meetings with their attorneys in the open or to yell over the phone obviously compromises the consultation." *Johnson-El*, 878 F.2d at 1052. Thus, in *Gluth*, this Court reminded defendants of their obligation "to facilitate confidential and privileged contacts between Central Unit prisoners and outside lawyers, authorized paralegals, legal organizations, governmental agencies and courts, through regular visits and adequate use of telephones and mails." 773 F. Supp. at 1321. See also, *Dawson v. Kendrick*, 527 F. Supp. 1252, 1313-14 S.D.W.Va. 1981) (failure to provide sufficient and regular telephone service in the jail operates to deprive prisoners of their right to have a reasonable opportunity to seek and receive the assistance of attorneys).

In this case, the prisoners are arbitrarily denied confidential attorney-client phone calls. The lack of a Central office policy allows individual prisons to set arbitrary standards that allow for improper denial of calls to counsel. Prison staff are not required to justify the denial in writing. In addition, prisoners are forced speak to their attorneys on monitored lines or within hearing range of prison staff. Thus, inmates are denied access to the courts.

Injunctive Relief

Because the defendants' system fails to comply with constitutional standards, the Court has determined that injunctive relief is appropriate for the access to the courts issues.

Many of the issues in this case have been resolved for the Central Unit in Florence by the Special Master [Dan Pachoda] and his assistant [Janet Bliss] appointed in the *Gluth* case. In addition, the Ninth Circuit has affirmed the resolution of those issues. Therefore, the Court intends to appoint Dan Pachoda as Special Master and Expert and Janet Bliss as Assistant Special Master to work with the parties and develop the proper injunctive

relief. A detailed order will follow setting forth the duties of the Special Master.

For those issues that have been resolved successfully in *Gluth*, the Court intends to implement the *Gluth* policies statewide, with any modifications that the parties and Special Master determine are necessary due to the particular circumstances of the prison facility. For the remaining issues not addressed in *Gluth*, the Special Master and his assistant will work with the parties to develop the proper injunctive relief for plaintiffs.

Dated this 13 day of November, 1992.

/s/ C.A. Muecke
C.A. MUECKE
U.S. District Judge

APPENDIX C

[Filed Oct. 13, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CIV 90-0054 PHX CAM
No. CIV 91-1808 PHX CAM
(consolidated)

FLETCHER CASEY, *et al.*,
Plaintiffs,
vs.

SAMUEL A. LEWIS, *et al.*,
Defendants.

ORDER

Having considered the Special Master's proposed permanent injunction, the Court concludes as follows:

This Court issued Findings of Fact and Conclusions of Law for the access to the courts issues in this case on November 13, 1992, finding violations of the inmates' constitutional rights to access to the courts and that injunctive relief was appropriate. In that order the Court further stated:

Many of the issues in this case have been resolved for the Central Unit in Florence by the Special Master [Dan Pachoda] and his assistant [Janet Bliss] appointed in the *Gluth*¹ case. In addition, the Ninth Circuit has affirmed the resolution of those issues.

¹ See *Gluth v. Kangas*, 773 F.Supp. 1309 (D. Ariz. 1988), *aff'd*, 961 F.2d 1504 (9th Cir. 1991).

Therefore, the Court intends to appoint Dan Pachoda as Special Master and Expert and Janet Bliss as Assistant Special Master to work with the parties and develop the proper injunctive relief. A detailed order will follow setting forth the duties of the Special Master.

For those issues that have been resolved successfully in *Gluth*, the Court intends to implement the *Gluth* policies statewide, with any modifications that the parties and Special Master determine are necessary due to the particular circumstances of the prison facility. For the remaining issues not addressed in *Gluth*, the Special Master and his assistant will work with the parties to develop the proper injunctive relief for plaintiffs.

On November 25, 1992, this Court issued an order setting forth the duties of the Special Master and the parties in formulating and implementing the permanent injunction. The Order provided, in pertinent part:

(2) *The Special Master shall have the following Responsibilities:*

- (a) The Special Master shall formulate the injunctive relief necessary to remedy the constitutional violations relevant to the access to the courts issues in this case and monitor the implementation of that injunctive relief.
- (b) For those issues resolved in *Gluth*, the Special Master shall implement the injunctive relief set forth in *Gluth v. Kangas*, [Exhibit A], with modifications deemed appropriate because of the particular circumstances of the facility. Exhibit A, a compilation of the orders in *Gluth*, sets forth the specific injunctive relief ordered in that case.

No later than January 22, 1993, the parties shall file written objections, if any, setting forth their objections to implementation of the *Gluth* injunction in particular facilities. The objections shall set forth the particular provisions of the injunction to which they object; propose modifications to the injunction and set forth the particular circumstances that require modification of the injunction. The particular needs or circumstances must be documented and supported by evidence.

- (c) For those issues not resolved in *Gluth*, the Special Master shall meet with the parties, obtain their input on the form of injunctive relief, and propose the final injunctive relief.
- (d) In formulating his proposals for a permanent injunction, as provided for in the preceding paragraph, the Special Master, in addition to his own inquiry, shall:
 - (1) Meet with inmates, appropriate Arizona Department of Corrections personnel and counsel to make whatever reasonable inquiry necessary to evaluate ways to insure adequate access to the courts.
 - (2) Report his conclusions to the parties and this Court at such time as will be fixed by the Court after consultation with the Special Master and the parties. The Special Master will be available to provide testimony about his final report at a hearing to be scheduled by the Court to enable the parties and the Court to cross-examine

the Special Master for the record and to assist the Court in determining the language and content of the permanent injunction.

- (3) Have all powers necessary to carry out these functions including but not limited to the power to compel attendance of the parties at negotiating sessions, and to have access to documents and necessary ADOC personnel and inmates.
- (4) File his report(s) with the Clerk of the Court and shall file any proceedings that are transcribed, and the original exhibits, and any other evidence. The Clerk shall immediately mail notice of the filing to all parties.
- (5) When a party so requests, make a record of the evidence offered and excluded at any hearing conducted by the Special Master.
- (6) Proceed with all reasonable diligence in conducting hearings and investigations necessary for compliance with the Court's order.
- (e) The Special Master shall file periodic written reports to the Court and shall file a final written report of his findings, conclusions, and recommendations no later than July 1, 1993.
 - (1) The Special Master shall include in his final report to the Court and the parties, the language he proposes that the Court should use in the form of a permanent injunction to keep in place

for the future, i.e., such procedures as needed to provide for and allow continued access to the courts by the class members.

- (2) The Court will subsequently conduct hearings that it deems necessary to determine the language of the final injunction.
- (3) The parties involved may procure the attendance of witnesses before the Special Master by the issuance and service of subpoenas, and may offer testimony and witnesses in support or opposition, and may cross-examine opposing witnesses. This does not preclude any party from objecting to the subpoena and raising any legitimate defenses subject to the ruling of the Special Master.
- (4) Within ten days after being served with notice of the filing of the Special Master's report, any party may serve written objects thereto upon the other parties and the Court. The Court may accept, or may modify or reject the report after examination of the report and the objections, or may receive further evidence.
- (5) The special master will be available to provide testimony about his findings, conclusions, and recommendations at hearings scheduled at the request of the parties, special master, or Court to determine the parameters of the final order.

- (6) The special master shall have all powers necessary to carry out these functions including access to underlying documents, prison records, and other information, cooperation from ADOC personnel, and contact with prisoners.
- (7) The Court will describe any continuing duties of the special masters when it issues its final judgment. However, the special master may also make recommendations as to what these continuing duties should entail.
- (8) All costs and expenses, including a reasonable compensation for the responsibilities of performing the duties of special master shall be covered by defendants.

In addition to the January 1993 objections, the Special Master allowed further objections and considered those objections through September of 1992. Plaintiffs and defendants filed objections and met with the Special Master in January and April of 1993 to negotiate the language for the proposed order. The Special Master lodged the proposed permanent injunction on July 12, 1993. The parties were allowed to object to the final proposed order. The Special Master has incorporated many of the objections of the parties into that proposed order² and lodged the final proposed permanent injunction.

Having reviewed the final proposed injunction, the Court has determined that the injunction is appropriate and that the parties have been allowed sufficient input into the final injunction.³

² For explanation of the objections and their outcome, see the Commentary beginning on page 25 of the proposed order.

³ As emphasized by the Court in previous orders, during implementation of the order, the Special Master may suggest modifica-

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IT IS THEREFORE ORDERED THAT the permanent injunction, as proposed by the Special Master, is adopted by the Court.

DATED this 8 day of October, 1993.

/s/ C.A. Muecke
C.A. MUECKE
U.S. District Judge

tions to the injunction as he deems appropriate. Therefore, if implementation of a particular portion of the injunction proves unworkable, plaintiffs or defendants should raise the problems with the Special Master or Assistant Special Master.

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[Filed Oct. 13, 1993]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CIV 90-0054-PHX-CAM
(Lead)

No. CIV 91 1808-PHX-CAM
(Consolidated)

FLETCHER CASEY, JR., *et al.*, on behalf of themselves
and all others similarly situated,
Plaintiffs,
v.

SAMUEL A. LEWIS, Director
Arizona Department of Corrections, *et al.*,
Defendants.

CHARLES L. ARNOLD, guardian ad litem
on behalf of H.B.,
Plaintiff,
v.

SAMUEL LEWIS, Director; MARY VERMEER, Deputy Warden, Santa Maria—Perryville; DAVID FERNANDEZ, M.D., Arizona Department of Corrections, in their official capacities,
Defendants.

PERMANENT INJUNCTION ACCESS
TO THE COURTS ISSUES

INTRODUCTION

The recommended permanent injunction with commentary is enclosed. Plaintiffs and defendants seek a quick decision based on the present inputs. Neither side

requests an evidentiary hearing or argument before the Court.

Following extensive fact-finding, a proposed permanent injunction was filed on July 12, 1993. The parties were given opportunity to submit comments on any proposed changes (as compared to the *Glush* language), or to re-emphasize previously requested modifications. The comments were due July 30, 1993.

Plaintiffs' response is attached (App. "A"). On July 27, defendants informed the Special Master that ADOC personnel were still circulating the proposed order for comment. After reiterating that the instant response was not intended for new objections to the *Glush* language, the Special Master granted an extension to August 13.

Defendants' response is attached (App. "B"). As noted in plaintiffs' motion to dismiss (App's. "C", "E"), and recognized by the Court (App. "F"), most of the specific requests involve matters that should have been investigated and resolved during the appropriate January-to-June period. Additionally, the requests rely on conclusory and unsupported allegations.

After receipt, the Special Master told the parties that proper consideration of these requests required a re-opening of the investigation to enable all involved to adequately assess their validity. Plaintiffs and defendants opposed this delay. They were also aware of the possibility of modifications after implementation based on demonstrated need.

Defendants' counsel contended that given the steps triggered by previous requests, including the numerous trips to ADOC facilities and discussions with personnel, the Special Master should be in position to quickly evaluate the new requests. However, not only is a more complete picture necessary, but the available information indicates that defendants' present conclusions are not supported by the known facts.

For example, the collected data apparently demonstrates that: the majority of facility yards do not close for all prisoner activity by 8:30 p.m.; photocopies cost less than five cents per page; one trained librarian for every three law libraries is inadequate; any vandalism of library books is not primarily attributable to access to the stacks; and it is possible to allow the required weekly meetings with Legal Assistants, the daily exchange of materials for persons denied library access, and brief messages from attorneys.

The Special Master has always responded to demonstrated security problems. However, such labels in defendants' submission are not consistent with ADOC practices. As one example, even at CB6, a maximum security unit that includes death row, prisoners have been given advance notice of their scheduled library visits and permitted to continue to use typewriters with "memory", including those provided in the library.

The Special Master's first-hand knowledge proves that defendants' assertions of impossibility with regard to finding librarians with para-legal degrees are baseless. Even brief contact with local schools, for example, by the Special Master's office produced qualified applicants; defendants chose not to follow up. Given the low salary, it is predictable that persons with a para-legal degree requiring two years after high school are more readily available than those whose library science degree required five or six years.

The Order. The requirements in the enclosed Order repeat or closely track those in the July 12 submission. Questions raised by the parties resulted in some language changes to more accurately reflect the intent. A few additions clarified understandings of the *Glush* parties that were not incorporated in that final injunction. These include the limited ability to assign a law librarian to a second facility (recently requested in *Glush* by defend-

ants), and the basic prohibition on the use of uniquely onerous conditions to "chill" prisoner access (*see*, I.A. and commentary).

Finally, language concerning disclosure of information received from a prisoner by a Legal Assistant has been omitted pending review and suggestions from the parties. Recent decisions indicate a potential conflict between the *Gluth* formulation and fundamental state due process rights. [E.g., *State v. Melendez*, 172 Ariz. 68, 834 P.2d 154 (1992) (Sup. Ct. of Ariz., en banc)].

ORDER

The Arizona Department of Corrections (ADOC) shall provide meaningful access to the Courts for all present and future prisoners. The practices and procedures set out below will achieve this constitutional mandate. They concern those areas raised by or necessarily implicated in this litigation and incorporate approaches utilized by ADOC administrators.

I. THE LAW LIBRARIES

With the exception of the existing Aspen DWI and Flamenco Units at ASPC—Phoenix, the Papago DWI and Maricopa Units at ASPC—Douglas, and the Picacho Unit at ASPC—Florence, each ADOC facility with a population or capacity of 150 or more shall contain a fully equipped law library. Each library shall have sufficient seating capacity and be open for sufficient periods to enable adequate research and compliance with this Order.

A. ACCESS

ADOC prisoners in all housing areas and custody levels shall be provided regular and comparable visits to the law library. This opportunity may be postponed on an individual basis because of the prisoner's documented inability to use the law library without creating a threat to safety or security, or a physical condition if determined by medical personnel to prevent library use. Upon request, a prisoner will be permitted a minimum of ten hours of actual law library use each week; additional time shall be allowed if necessary to meet a filing or other legal deadline.

Law library access shall not be reduced or discouraged by unnecessarily onerous conditions or retaliatory practices. Prisoner access to the law library shall be on terms equivalent to those for participation in other congregate activities at the facility such as classes, jobs and meals, and shall not occasion unique hardships including, but

not limited to, regular strip searches of library users and automatic disciplinary write-ups for missed library visits.

B. *SCHEDULE*

1. *Library Hours*

a. Facilities that do not require advance requests for a library turn-out:

The law library shall be open for prisoner use at least 50 hours each week. This schedule shall involve hours between 7:00 a.m. and 10:00 p.m., and include at least four hours each week night between 5:00 p.m. and 10:00 p.m., and at least five hours between 7:00 a.m. and 10:00 p.m. on Saturday and on Sunday.

b. Facilities that require advance requests for a library turn-out:

The law library shall be open for prisoner use at least 60 hours each week if the facility population and capacity are less than 400, for at least 70 hours each week if either is between 400 and 700 and neither over 700, and at least 80 hours per week if either is over 700. These schedules shall involve hours between 7:00 a.m. and 10:00 p.m., and include at least four hours each week night between 5:00 p.m. and 10:00 p.m., and at least eight hours between 7:00 a.m. and 10:00 p.m. on Saturday and on Sunday.

2. *Prisoner Use*

In all facilities, each visit or turnout must provide the prisoner a minimum of two hours of actual library use. Facilities that do not require advance requests shall provide sufficient library periods that are free of conflicts for all prisoners to have this opportunity; these facilities do not have to change the scheduled closing time for late arrivals. Every prisoner will sign the log book at the law library to indicate the time of arrival at and departure

from the library; copies of the log book pages shall be maintained for the Special Master.

If more than one reading room is utilized, a prisoner may choose which room to sit in, provided that the rooms are not reserved for different custody levels and no other documented security considerations exist. This choice is subject to the need to maintain comparable numbers in each room, although a prisoner shall be allowed to sit with any prisoner providing legal help even if not a "Legal Assistant".

3. *Notice*

At least one week prior to the end of each month ADOC shall make known to all prisoners (a) the law library schedule of hours and turnouts for the next month, and (b) the specific schedule of important activities at the facility for the next month, including visiting hours, classes, religious services, and field turnouts for each housing area; this is not required for those items whose schedule (days and hours) remains the same in the upcoming month.

Within two months of entry of this Order, for each facility ADOC shall provide the Special Master (a) the weekly law library schedule and, if applicable, the specific turnouts or sessions for different custody levels or housing areas, (b) the names of the security and civilian employees assigned to the law library with their specific hours, (c) the names of the prisoner law clerks with their specific hours, (d) the names of the prisoner Legal Assistants, and (e) the schedule of ongoing activities that might conflict with law library access, including work assignments, classes, recreation, religious services, commissary, visiting and meals.

C. *ADVANCE REQUEST PROCEDURE*

When advance requests are used, prisoners shall be responsible for selecting their law library turnouts and for

depositing their requests directly in the appropriate receptacle; this requires that ADOC provide timely and adequate information, forms, and access to receptacles.

The first library turnout requested by a prisoner must be at least three days after the day the form is deposited; this shall be less if necessary to meet a legal deadline. The week referred to in I (A) begins the day of the first scheduled turnout, and at least ten hours of library use shall be permitted during this seven-day period.

Defendants shall provide adequate notification to prisoners of the above procedures and timetables, including posting in each cell block. The Special Master, in consultation with plaintiffs and defendants, shall analyze the library and turnout schedules, including those periods regularly revealing below average attendance, and ascertain whether any alterations are required for adequate access.

1. *Forms*

ADOC shall develop law library turnout and legal assistance request forms and have them regularly available in the housing areas and law library for distribution to prisoners. The law library form should minimally include space for the date submitted and for the selection of specific library turnouts and alternates for up to two weeks, and to detail any filing or other legal deadline. Any such deadline should be verified by relevant documentation possessed by the prisoner, or by a description of this information and explanation of why it is not available.

2. *Receptacles*

ADOC shall maintain secure, tamper-resistant receptacles for law library and other legal assistance requests from prisoners. These receptacles must be easily accessible to prisoners in all housing areas and custody levels on a daily basis.

D. *ADVANCE RESPONSE PROCEDURE*

Law Library staff or clerks shall collect the prisoner law library and other legal assistance forms from each deposit point at least once every day. ADOC must develop procedures for scheduling law library turnouts that provide adequate notice and access for all eligible prisoners with preference for those with filing or other legal deadlines, and that insure compliance with this Order. This minimally requires that law libraries requiring advance scheduling be equipped with a computer that is regularly and primarily used for this purpose.

Denial of a particular turnout may be based on a lack of available library space for that period, or on a finding that the requesting prisoner and a prisoner previously scheduled for that period cannot be together in the library without creating a serious threat to safety or security. If a denial occurs, the prisoner shall be given preference on the remaining requests or a timely opportunity to make additional requests if necessary to meeting the weekly ten-hour minimum requirement.

A prisoner shall be provided written notification of his or her scheduled law library turnouts and of any denied with the reason for the denial, and given the opportunity to make additional requests if necessary. This notice must reach the prisoner at least 24 hours before the time of the first requested turnout whether this was granted or denied. Copies of the names or total number of prisoners scheduled for each turnout, and of the number or percent of those who attended, will be kept at the law library for collection by the Special Master, as will copies of turnout denials.

E. *LAW CLERKS*

ADOC shall provide a sufficient number of law library prisoner law clerks to permit adequate assistance for prisoners using the library and for those ineligible for such

use, including Spanish-speaking prisoners in both categories. This assistance includes providing elementary information about the content and purpose of the books and materials in the library, and about researching specified issues and locating relevant decisions, statutes, regulations and forms. In order to adequately perform this basic function, law clerks must successfully complete the legal research course, described in II (D) below, either prior to beginning work or the first time it is available. In contrast to Legal Assistants, law clerks shall provide guidance to all eligible prisoners, although such guidance is limited in scope and does not extend to the preparation of legal documents for others.

For each session or turnout, at least two law clerks per reading room shall be assigned to provide the court-ordered research assistance in the room and, if applicable, book retrieval for that room. Prisoners with research experience and ability shall be solicited and favored for the law clerk positions by the relevant institutional committees and administrators.

F. RESEARCH GUIDE

The Special Master will oversee the preparation of an introductory guide to the use of the law library in Spanish and English, with brief explanations of the contents and use of the available resources and elementary research assistance on the most common legal issues. Plaintiffs and defendants will review the proposed introductory guide and have an opportunity to comment. After final approval by the Special Master, this guide shall be printed by defendants and made available to all requesting prisoners while attending the law library.

G. LIBRARIAN

ADOC shall provide at least one full-time professionally trained librarian at each law library with adequate secretarial support for the librarian and law library. A law

librarian may be assigned to a second facility provided that the population in that facility is less than 200. Subject to identified security needs, the librarian will be responsible for the policies and procedures in the law library and for insuring adequate prisoner access to the courts.

The librarian must possess a library science degree, law degree or paralegal degree. Preference shall be given to applicants with a law or paralegal degree, and each ADOC complex shall minimally employ at least one such librarian. The Special Master will work with ADOC on securing applicants, including contacting para-legal and law schools, and professional organizations. If good faith efforts are unsuccessful, the Court or Special Master may permit the hiring of an applicant with the required graduate library science degree.

H. CONDUCT

If bathroom facilities are available, prisoners may be required to remain in the law library for a full turnout period; this may not be done for those attending solely for supplies or for notary or copy services. After being warned when possible, a prisoner may be restrained and removed from the library if he or she continues to create a threat to safety or security or to directly interfere with others' use of the library. Within 48 hours of removal, the prisoner must be provided written notice of the reasons and factual basis for this decision, with a copy held for the Special Master. A prisoner cannot adequately use the law library under restraint, including handcuffs and shackles. While in the library, non-intrusive actions, including reasonable conversations with prisoners or staff, writing, and sitting quietly, are permitted.

I. "CHECK-OUT" SYSTEM

Prisoners in minimum and medium security facilities shall be permitted direct access to the stacks when using the law library. All prisoners in a particular maximum

security institution (level 5 and above) may be denied direct access if ADOC documents vandalism or losses resulting from such access in that institution. Prisoners attending the law library shall be provided at their expense copies of limited portions of available legal materials, including cases, laws and forms, for use in the housing area; indigent prisoners shall be provided at defendants' expense any such copies required for submission to a court or agency.

If prisoners are denied direct access to the stacks ADOC must act to allow adequate research. At a minimum, upon a single check-out request for more than one book, a clerk or employee shall retrieve at least two books for the prisoner; this does not affect the practice permitting prisoner use of more than two books at a time while in the reading room.

J. NOISE LEVEL

ADOC shall take all necessary steps, and correct any structural or acoustical problems, to reduce an unacceptably high noise level in any law library. At a minimum, totally enclosed reading rooms shall not be utilized. If necessary, chain or wire material may be installed in windows separating the reading room and stack and control areas, provided that this does not interfere with the sound-flow or sight-line. Such material should not inhibit normal conversation through the window between a prisoner in the reading room and an assisting law clerk or employee, nor make it difficult to read book titles and covers of other materials.

K. PAGING SYSTEM

Individual prisoners who are not able or permitted to visit the law library must be allowed regular and timely access to necessary books and materials. This minimally requires daily exchanges between such prisoners and law library representatives of an adequate amount for re-

search purposes of requested books and materials, or copies, including cases, statutes, annotations, regulations, forms, secondary sources, and research guides. Every prisoner shall be provided a copy of the research guide required by I (F) and request forms, and be visited by a law clerk or Legal Assistant or employee with legal research experience, within 24 hours of being restricted.

L. INVENTORY

ADOC shall adequately maintain up-to-date collections in each law library of the materials and resources required by *Wilkinson v. MacDougall*, CIV 81-1397 (Jan. 5, 1984); Arizona Reporters are optional. With the approval of the Court or Special Master, defendants may use clearly equivalent publications including, but not limited to, the United States Code Service (for United States Code Annotated), Lawyers Editions (for Supreme Court Reporters), Federal Procedure Lawyers Edition (for Federal Practice and Procedure), and American Jurisprudence (for Corpus Juris).

In addition, each library shall adequately maintain (a) a full and up-to-date set of Pacific Reporters and Digests, (b) sufficient latest editions of at least three self-help or litigation manuals that assist prisoners on relevant substantive and procedural issues, (c) basic, up-to-date materials and forms in the areas of immigration practice and post-conviction remedies, and (d) a recent Arizona Bar Directory. The Special Master shall assist in identifying the specific materials, and approve these before use by ADOC.

II. THE LEGAL ASSISTANCE PROGRAM

Meaningful access to the courts requires direct assistance for prisoners who, because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing. In the absence of a program providing such pris-

oners with lawyers or paralegals, ADOC must maintain a sufficient number of at least minimally trained prisoner Legal Assistants at each facility, and not set institutional limits on such persons.

A. *SELECTION*

A prisoner shall become a Legal Assistant by agreeing to abide by the procedures governing Legal Assistants, and by taking the legal research course. It shall not be necessary for prisoners to take the course prior to being approved as a Legal Assistant or beginning work. Such persons must have some legal research training, experience, or ability, and, after selection, must successfully complete the full course including the live component when first available. Applicants are eligible for the full course if (a) they have a high school or GED diploma, or (b) pass a basic literacy skills test to the satisfaction of the instructor, or (c) are presently on an institutional Legal Assistant list. Absent relevant new factors, transferred Legal Assistants shall be continued in that status.

An otherwise eligible prisoner may be denied Legal Assistant status, or removed as a Legal Assistant, because of documented prison behavior indicating that he or she would create a threat to safety or security in that position; such action may not be based solely on a particular custody level or housing area, or on irrelevant infractions. A prisoner must be provided written notification of this decision, with the reasons and specific acts involved and permitted an opportunity to appeal; the notice and response shall be provided to the Special Master.

B. *NUMBER*

ADOC shall act to insure an adequate minimum number of Legal Assistants for each institution and custody level; there is no maximum. Particular steps must be taken to locate and train bilingual prisoners to be Legal Assistants. This minimally requires that schedules and

notices relating to all institutional legal services and programs be made available in Spanish and English.

C. *RETENTION*

A Legal Assistant must demonstrate at least minimal competence after one year, and thereafter upon the receipt of complaints about his or her legal work. This demonstration should be done by submitting sufficient recent legal writings and litigation materials to the legal research instructor for review, and/or by completing assigned exercises for evaluation. A determination by the instructor to remove a prisoner found not minimally competent from the Legal Assistant list must be made in writing with specific reasons and examples, and the relevant work products attached; this shall be provided to the Special Master. Such a prisoner should be reinstated upon compliance with the requirements of II (A) above.

D. *RESEARCH COURSE*

ADOC shall offer a videotaped legal research course for all prisoners, with an additional live component for prisoner law clerks and Legal Assistants, and applicants.

1. *Video Component*

The video will be 30-40 hours long with a primary focus on the fundamentals of legal research and writing, including use of the books and materials available in the law libraries. Doctrinal areas of most concern to prisoners should be covered, including 42 U.S.C. Section 1983 and other major civil rights laws; prison practices, including disciplinary and classification measures; relevant tort and civil law, including immigration and family issues, and relevant areas of criminal procedure, including appeals, collateral attacks, Habeas Corpus and time computations.

The entire video will be available for viewing by prisoners at least once in any six month period. Particular

sessions (up to six hours) shall be available for viewing at least once in any three month period for a requesting prisoner. ADOC shall develop mechanisms for the required viewing in each facility, and submit these plans to the Special Master.

The video shall be prepared by persons selected and supervised by the Special Master. It will be funded by ADOC and used in all ADOC facilities. The taped materials shall be reviewed and updated as needed, but at least once every three years.

2. *Live Component*

Shortly after viewing the taped course, prisoner law clerks and Legal Assistants, and applicants, shall be offered an additional twenty hours of live instruction. This opportunity shall be available at least once in a six month period. The instructors shall be lawyers, law students or trained paralegals with demonstrated experience and ability in teaching and evaluating legal research and writing; the proposed syllabus and schedule, and instructor's experience shall be reviewed by the Special Master for each live offering.

The live portion shall include sessions in a facility law library, with written exercises required and returned with comments. Based on a student's performance in class and on assignments, the instructor shall determine whether the prisoner is minimally competent to assist others. This determination shall be made in writing and provided to the prisoner and to the Special Master.

E. *RESPONSIBILITIES*

A Legal Assistant should not undertake or continue to assist another prisoner if, because of workload, inexperience, conflict of interest, or any other factor, he or she cannot do so in an effective and timely manner; any such factor may serve as the basis for denying a prisoner's request for assistance. On occasion, a Legal Assistant

should be prepared to respond to an institutional request to assist another prisoner or to assess the viability of a legal claim.

F. *OPERATING PROCEDURES*

1. *Selecting a Legal Assistant*

An updated complete list of Legal Assistants must be regularly available in the law library and housing areas, with all relevant instructions about the Legal Assistant Program including the selection process; this process shall not require disclosure of the requesting prisoner's legal concerns. An agreement between a prisoner seeking assistance and a Legal Assistant will be reported to and recorded in the law library. An ADOC denial because of mistake or ineligibility, or upon finding that these two prisoners cannot be together without creating a serious threat to safety or security, and the opportunity for an alternate selection, shall be provided to the prisoner and to the Legal Assistant within 72 hours of the report to the library; a copy will be held for the Special Master.

A prisoner who is unable to reach agreement with a Legal Assistant or requires a replacement, may seek institutional intervention by filing a request form in the appropriate receptacles. Upon receipt, ADOC shall act to secure the requested assistance in a timely fashion. The institution will be relieved of this responsibility in a particular matter if two Legal Assistants independently conclude after adequate review that the prisoner's claim is not viable nor capable of redress by formal legal processes; such responses shall be provided to the Special Master.

2. *Meetings*

A prisoner shall request a meeting with a Legal Assistant by use of a legal assistance form and receptacle. Legal Assistants may initiate such meetings in the same manner. Provided that other applicable requirements are

met, including access equivalent to I(C)(3), ADOC may utilize an alternative method of requesting a meeting when the sole purpose is preparation for a disciplinary hearing. ADOC must arrange a meeting that occurs within 72 hours of a request and notify the prisoner and Legal Assistant in writing of the time and place at least 24 hours prior to the meeting. An imminent legal deadline, including a pending disciplinary hearing, noted on a request requires an expedited meeting occurring within 24 hours of the request by a prisoner or Legal Assistant; II(F)(2) does not otherwise apply to assistance provided solely for a pending disciplinary matter.

ADOC must allow a prisoner to meet at least three hours each week at reasonable times and under reasonable conditions with his or her Legal Assistant; additional time shall be permitted to meet a filing or other legal deadlines. Such meetings may occur during law library turnouts; a request by a prisoner or Legal Assistant to have both persons scheduled for a particular turnout shall be given preference. If the library is not requested or available, another location allowing the necessary privacy should be utilized.

A non-contact meeting may be used by ADOC if there is a finding that this is required because of documented security problems attributable to these two prisoners, or if either is in a fully segregated status. The reasons for the non-contact shall be provided to the prisoners in the required meeting notice, and to the Special Master. Any such non-contact meeting shall permit discussion in normal tones, and allow both participants clear sight of each other and of each others legal papers.

Meetings between a prisoner and his or her Legal Assistant shall not be recorded or listened to. A prisoner shall not be given Legal Assistant status nor assigned to provide legal assistance with the objective of providing information to institutional personnel.

3. *Library Time*

ADOC shall provide Legal Assistants with additional time in the law library commensurate with their obligations to assist other prisoners. In addition to his or her own hours, a Legal Assistant shall be permitted an additional two hours of library use per week for each prisoner registered as assisting; this may be done at times when the library is not open for general use. The additional hours scheduled for a Legal Assistant may be subtracted from the weekly minimum of the prisoner being assisted.

4. *Supplies and Services*

A Legal Assistant may possess and utilize the legal supplies and services available to a prisoner he or she is registered as assisting solely for purposes relating to this assistance. If this prisoner is indigent, the Legal Assistant will be permitted those free legal supplies and services that are provided to indigent prisoners. These supplies and services must first be requested by the indigent prisoner for delivery to the Legal Assistant.

G. *OTHER PRISONER ASSISTANCE*

Nothing contained herein shall reduce a prisoner's opportunity to consult with any accessible prisoner about a legal matter, nor prohibit any prisoner, consistent with institutional requirements, from providing assistance on legal concerns, including court-related matters and institutional proceedings.

H. *OUTSIDE LEGAL CONTACTS*

Nothing herein reduces defendants' obligation to facilitate confidential and privileged contacts between prisoners and outside lawyers, authorized paralegals, legal organizations, governmental agencies and courts, through regular visits and adequate use of a telephone and mails.

I. TELEPHONE CALLS

Prisoners shall be allowed a weekly minimum of three twenty-minute calls to: (1) an attorney, (2) a designated attorney representative, or (3) a legal organization; additional calls will be permitted in an emergency. ADOC shall install a sufficient number of telephones in each facility to enable these calls during usual business hours. The calls will not be recorded or listened to, and the location of the telephones must permit private conversations.

ADOC may install systems to verify the number called and time used but, absent documented abuse, shall not deny a call to any persons in one of the above three categories nor seek any information about the call. A prisoner may choose to pay for a call or make it collect. Calls that are not completed because of technical problems, or a failure to answer or refusal to accept, do not count. Brief incoming telephone messages involving legal deadlines or other necessary information from an attorney or representative shall be timely delivered to a prisoner.

III. LEGAL SERVICES AND SUPPLIES

Meaningful access to the courts requires the availability of basic services and supplies needed for research and writing, and for the preparation and delivery of acceptable court papers.

A. NOTARY SERVICE

ADOC must provide notary service for legal papers and court-related documents within 24 hours of request by a prisoner; this period shall be less if necessary to meet a legal deadline. Absent a legal deadline, this service is not required on weekends or legal holidays. The request may be made in person during a law library turnout or by use of a legal assistance receptacle.

B. PHOTOCOPYING

ADOC must provide the necessary copies of eligible legal papers and court-related documents within 48 hours of a request by a prisoner; this period shall be less if necessary to meet a legal deadline. The request may be made in person during a law library turnout or by use of a legal assistance receptacle. ADOC may charge a reasonable rate for this service, up to five cents per page.

Eligible legal papers and documents include petitions, complaints, answers, motions, affidavits, exhibits, memoranda and briefs, including attachments and appendices, and material needed for discovery and investigation, including interrogatories and freedom of information requests. ADOC shall advise staff that prisoner legal materials are confidential and may not be read; a clearly visible sign indicating this shall be posted on or next to every copy machine used for legal materials. Each facility shall have such a machine.

C. TYPEWRITERS

Prisoners may possess typewriters and necessary accessories; storage memory is permitted but programming capacity may be denied. ADOC shall provide an adequate number of functioning typewriters in each law library for prisoner use in the preparation of legal papers. This minimally requires a one-to-five ratio of electric typewriters-to-law library capacity; such typewriters must be covered by a service contract or other professional repair system used at the facility.

D. SUPPLIES

Every facility shall have sufficient quantities of basic legal supplies regularly available for purchase by prisoners. Such supplies minimally include pens, pencils, legal pads, typing paper, typewriter ribbons, ko-rec-type or equivalent, file folders, regular size and manila envelopes, postage and

brief covers and binders. A reasonable price may be charged for these items, within the departmental guidelines of a ten percent above cost maximum mark-up. The prices of all items, legal or otherwise, available for purchase must be publicized prior to ordering by prisoners. Subject to usual security and search procedures, prisoners may receive any basic legal supplies, books, and materials by delivery or mail from outside persons, organizations or businesses.

IV. INDIGENT PRISONERS

A. ELIGIBILITY

Subject to the requirements contained herein, a prisoner shall be provided basic legal supplies and services at ADOC expense if: (a) he or she has less than \$46.00 in the prison account on the date of the request, and (b) there has been less than \$46.00 in total deposits to this account in the 28-day period ending on the date of the request. A prisoner who meets (a) but not (b) shall be provided those specific supplies and services required to meet an imminent and documented legal deadline, and a written statement of the costs of these. If this occurs, ADOC may, with written notice to the prisoner, debit the prisoner's account whenever and to the extent that the balance exceeds \$46.00 until the cost of the emergency item is repaid.

ADOC shall regularly adjust the above cut-off figure in order to adequately insure a prisoner's access to basic legal supplies and services without sacrificing basic hygiene needs. This adjustment shall occur at least every 24 months beginning the date of the entry of this Order. It shall minimally be the percent change in the U.S. Consumer Price Index for the previous 24 months multiplied by the existing cut-off figure. The resulting new cut-off figure shall be rounded to the nearest fifty-cents.

B. SUPPLIES AND SERVICES

1. Supplies

Upon request, the following supplies shall be provided to eligible prisoners; the numbers in parentheses indicate the minimum amount of the item that must be provided for one week: pens (1), pencils (1), typing paper (10 sheets), legal pad (1), file folders (1) and regular envelopes (4). Brief covers and bindings, manila envelopes, and additional amounts of the above supplies shall be provided if necessary to meet a court deadline or requirement. Upon request, an eligible prisoner possessing a typewriter shall also be provided one suitable typewriter ribbon and one ko-rec-type or equivalent each week.

ADOC may require that the requesting prisoner check the specific items needed for legal research or preparation of legal papers during the next week. Pursuant to Section II (F)(4), the prisoner should indicate which, if any, of the supplies should be delivered directly to his or her Legal Assistant.

2. Postage

Postage shall be provided for all legal mail for eligible prisoners. Legal mail includes letters and documents sent to a court, to an attorney, to a legal agency or organization, or to a pro se opposing party.

C. PHOTOCOPYING

Eligible prisoners shall be provided the necessary copies of legal papers and court related documents as described in Section III (B). A prisoner shall minimally be provided with the number of copies of a document required by the Court, plus one copy for the opposing party and one for his or her records.

D. REQUEST PROCEDURE

The request procedures and forms shall comply with the applicable requirements of Section I (C). The request may be delivered in person during a law library turnout

or placed in the appropriate receptacle. The prisoner should indicate that to his or her knowledge the eligibility requirements are met and which supplies and services are required.

E. *RESPONSE PROCEDURE*

Law library staff or clerks shall collect the prisoner request forms from each deposit point at least once each day. ADOC shall deliver the requested supplies or services to an eligible prisoner or designated Legal Assistant within 48 hours of the request; this period shall be less if necessary to meet a legal deadline. A prisoner shall be provided written notification of a denial of all or part of his or her request, with the specific reasons, within 48 hours of the request; a copy will be held for the Special Master. The 48 hour periods do not include weekends or legal holidays.

V. *IMPLEMENTATION*

A. *NOTICE*

Plaintiffs may transmit this Order and Commentary to members of the plaintiff class by mail or bulk delivery of copies to the ADOC and may provide ADOC with additional copies that will be kept on reserve in each law library and made available to prisoners during library turnouts. Plaintiffs or the Special Master may provide ADOC with a summary of this Order which shall be made regularly available in the law library and housing areas.

B. *SPECIAL MASTER*

All orders concerning the powers, payment and responsibilities of the Special Master, Professor Daniel J. Pochoda, are herein incorporated. Above references to the Special Master include his authorized representatives and Assistant Special Master Janet Bliss.

COMMENTARY

I. *THE LAW LIBRARIES*

Defendants' proposal that existing institutions without law libraries should not be required to build them is reasonable; the significant costs involved are not justified by need. Although not requested, the Proposed Order ("PO") allows ADOC to operate facilities without law libraries if the population is less than 150. Prisoners in the above prisons must get all of the required opportunities (10 hours per week in a law library, timely copies and supplies, legal assistance, etc.). Pending implementation and additional facts, specific size and seating requirements or ratios have not been included. Defendants agreed to address the clearly inadequate library at Santa Rita, ASPC—Tucson (minimum 22 capacity required).

A. & B. *ACCESS & SCHEDULE*

The PO adopts Defendants' proposal to reduce the total number of weekly library hours in facilities that do not require advance scheduling for turnouts. Thus, such facilities are only required to maintain a 50 hour per week schedule, as compared to the minimum 84 hours per week at Central Unit; the 50 hours are needed to meet the goal and mandates of the PO.

The PO includes some evening and weekend hours as done now in several facilities (e.g., Gila, Mohave at Douglas). These periods are necessary since most jobs keep prisoners occupied during weekdays (until 3:00 p.m., with dinner at 4:00 p.m.).

The PO also reduces the total time requirements in most facilities that, as Central Unit, require advance scheduling. This was done on the initiative of the Special Master based on an assessment of lesser-capacity institutions (Central Unit housed more than 800).

In every facility—absent emergencies—the library must be actually open and available for prisoner use during the “scheduled” hours. Such use cannot depend on the availability of a particular employee or prisoner clerk (any more than scheduled meals or visiting hours are).

As agreed when formulating the *Gluth* remedy, law library use cannot subject prisoners to unnecessarily onerous or retaliatory practices, including intrusive searches of all visitors or clerks and disciplinary write-ups for any failures to attend; These are occurring in some facilities. Such practices are not used at the maximum securing Central Unit or in most facilities. They are generally not required for other congregate activities (classes, jobs, meals, etc.). Unexpected events or suspected threats may require strip searches, and disciplinary action may be necessary if schedules are regularly ignored without explanation. At the Central Unit, reasonable explanations for missed turnouts include scheduling conflict, miscommunication, illness and employee error.

The PO adopts Defendants’ proposal to except the SMU—and on the Special Master’s initiative other facilities—from the *Gluth* turnout minimums. This is subject to receiving the actual schedules in each prison and determining their adequacies for all custody levels and housing areas.

C. ADVANCE RESPONSE PROCEDURE

The PO adopts Defendants’ proposal to only mandate computers in libraries requiring advanced scheduling.

G. LIBRARIAN

This mandate remains the same as *Gluth* with a “preference” for applicants with a law or paralegal degree. This is necessitated by Defendants’ failure to hire any such persons, despite their recognized value. In fact, in its April 1991 Order, the Court specifically noted the need

for such expertise and that such persons would reduce total costs to Defendants by their ability to teach the required research courses and to monitor the work of Legal Assistants.

I. “CHECK-OUT” SYSTEM

As was the case in *Gluth*, the PO permits use of a “check-out” system in maximum security facilities. It adopts Defendants’ more practical position that this system can—with the necessary showing—be instituted prison-wide, and not only on the person-by-person basis proposed by Plaintiffs. At this time, a check-out system may be used at the Central Unit, CB6 and Special Management Unit facilities.

Direct access to the stacks is required in lesser-security prisons, although reasonable measures may be taken (e.g., limit the numbers in the stacks, assign a clerk to observe and assist). Direct access facilitates adequate research and, given the limited experience of most prisoners, may on occasion be a significant factor. The primary cause of vandalism is addressed by allowing copies of portions of the books and materials available in the library, including cases, laws and forms, for use in the housing area (at the prisoners’ expense).

L. INVENTORY

This addition is required by the Court’s September 13, 1992 Findings and Conclusions; it closely follows these Findings and Plaintiffs’ proposal. Additional costs attributable to Pacific Reporters are offset by making the Arizona Reporters optional and generally by allowing clearly equivalent (competing) publications.

II. THE LEGAL ASSISTANCE PROGRAM

D. RESEARCH COURSE

This is an effort to reduce the obligations on and costs to Defendants while still providing the previously adjudicated 60-hour course (at least for law clerks and Legal

Assistants). Thus, the PO provides that most of the 60 hours will consist of video taped sessions and that the great majority of prisoners would be limited to these sessions. While there would necessarily be dollar-costs required to prepare this lengthy and difficult tape, it is primarily a one-time expenditure and represents significant savings from the twice-a-year, 60 hour live *Gluth* model.

An effective course for clerks and Assistants requires a live component, including hands-on training in a law library and feedback on written exercises. This component is greatly reduced (to 20 hours) and should allow for Complex-wide offerings. As noted, use of full-time librarians *with* law or paralegal degrees would result in little additional or ongoing costs because of this requirement. ADOC should require that other librarians and library staff take the full course.

F. 1. *SELECTING A LEGAL ASSISTANT*

The PO incorporates Defendants' proposal that Legal Assistant requests may be denied based on a finding about a security problem.

2. *MEETINGS*

The PO incorporates Defendants' request that contact visits may be denied because of security problems. As with library visits, unsupported blanket denials are not permitted (e.g., for an entire facility). There was no showing of necessity in all the prisons listed, and contact visits are used at the maximum security Central Unit. There was no explanation of why prisoners can have "contact" for some purposes, but not others (prisoners whose actions/status require complete separation meet the specific showing required by the PO). Courts have recognized that proper—and legal—remedial provisions are often not themselves "constitutional rights".

I. *TELEPHONE CALLS*

This is required by the Court's Findings and Conclusions. The specifics follow these Findings and Defendants' proposal, with a three call minimum (versus two).

III. *LEGAL SERVICES AND SUPPLIES*

A. *NOTARY SERVICE*

The Defendants' request regarding weekends and holidays is incorporated.

B. *PHOTOCOPYING*

The sign is required by the Court's Findings.

IV. *INDIGENT PRISONERS*

E. *RESPONSE PROCEDURE*

The PO adopts Defendants' proposal to include legal holidays.

DATED this 8 day of October, 1993.

/s/ C.A. Muecke
C.A. MUECKE
U.S. District Judge

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APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. A-851

SAMUEL A. LEWIS, *et al.*,
Petitioners,
v.

FLETCHER CASEY, JR., *et al.*

May 2, 1994

The application for stay of the enforcement of the injunctive order of the United States District Court for the District of Arizona, case Nos. 90-0054 and 91-1808, issued October 13, 1993, presented to Justice O'CONNOR and by her referred to the Court is granted pending the timely filing and disposition by this Court of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition for a writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

Justice BLACKMUN, Justice STEVENS, Justice SOUTER and Justice GINSBURG would deny the application for a stay.

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APPENDIX E

[Filed Nov. 25, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CIV 90-0054 PHX CAM
No. CIV 91-1808 PHX CAM
(consolidated)

FLETCHER CASEY, *et al.*,
Plaintiffs,
vs.
SAMUEL A. LEWIS, *et al.*,
Defendants.

ORDER

On November 13, 1992, the Court issued Findings of Fact and Conclusions of Law finding liability with respect to the access to the courts issues in this case. The only issue that remains regarding access to the courts is the scope of the injunctive relief. Appointment of a Special Master to investigate and report about how best to accomplish the goal of constitutionally adequate inmate access to the courts will provide this Court with the proper injunctive relief necessary to enter a final judgment.

IT IS THEREFORE ORDERED THAT:

(1) Daniel J. Pochoda is appointed Special Master in this case pursuant to Rule 53, Fed. R. Civ. P. Professor Pochoda shall also serve as an expert¹ qualified to exam-

¹ As an expert, the Special Master's testimony in court hearings, as well as his written report, shall become part of the record as direct evidence, subject to cross examination.

ine the conditions at the Arizona State Prisons relevant to the access to the courts issues. Janet Bliss shall serve as Assistant Special Master.

Daniel Pochoda and Janet Bliss have been acting in the capacities of Special Master and Assistant Special Master in *Gluth v. Kangas*, CIV 84-1626 PHX CAM. Many of the issues in this case have been resolved for the Central Unit in Florence by the Special Master and his assistant in the *Gluth* case. In addition, the Ninth Circuit has affirmed the resolution of those issues. The Special Master/Expert and his Assistant Special Master shall work with the parties and develop the proper injunctive relief. For those issues that have been resolved successfully in *Gluth*, the Court intends to implement the *Gluth* policies statewide, with any modifications that the parties and Special Master² determine are necessary due to the particular circumstances of the prison facility. For the remaining issues not addressed in *Gluth*, the Special Master and his assistant will work with the parties to develop the proper injunctive relief for plaintiffs.

(2) *The Special Master shall have the following Responsibilities:*

- (a) The Special Master shall formulate the injunctive relief necessary to remedy the constitutional violations relevant to the access to the courts issues in this case and monitor the implementation of that injunctive relief.
- (b) For those issues resolved in *Gluth*, the Special Master shall implement the injunctive relief set forth in *Gluth v. Kangas*, [Exhibit A], with modifications deemed appropriate because of the particular circumstances of the facility. Exhibit A, a compilation of the orders in *Gluth*, sets

² Unless otherwise noted, use of the word Special Master in this order refers to both the Special Master and his Assistant.

forth the specific injunctive relief ordered in that case.

No later than January 22, 1993, the parties shall file written objections, if any, setting forth their objections to implementation of the *Gluth* injunction in particular facilities. The objections shall set forth the particular provisions of the injunction to which they object; propose modifications to the injunction and set forth the particular circumstances that require modification of the injunction. The particular needs or circumstances must be documented and supported by evidence.

- (c) For those issues not resolved in *Gluth*, the Special Master shall meet with the parties, obtain their input on the form of injunctive relief, and propose the final injunctive relief.
- (d) In formulating his proposals for a permanent injunction, as provided for in the preceding paragraph, the Special Master, in addition to his own inquiry, shall:
 - (1) Meet with inmates, appropriate Arizona Department of Corrections personnel and counsel to make whatever reasonable inquiry necessary to evaluate conditions and policies to determine effective ways to insure adequate access to the courts.
 - (2) Report his conclusions to the parties and this Court at such time as will be fixed by the Court after consultation with the Special Master and the parties. The Special Master will be available to provide testimony about his final report at a hearing to be scheduled by the Court to enable the parties and the Court to cross-examine the Special Master for the record and to assist

- the Court in determining the language and content of the permanent injunction.
- (3) Have all powers necessary to carry out these functions including but not limited to the power to compel attendance of the parties at negotiating sessions, and to have access to documents and necessary ADOC personnel and inmates.
 - (4) File his report(s) with the Clerk of the Court and shall file any proceedings that are transcribed, and the original exhibits, and any other evidence. The Clerk shall immediately mail notice of the filing to all parties.
 - (5) When a party so requests, make a record of the evidence offered and excluded at any hearing conducted by the Special Master.
 - (6) Proceed with all reasonable diligence in conducting hearings and investigations necessary for compliance with the Court's order.
- (e) The Special Master shall file periodic written reports to the Court and shall file a final written report of his findings, conclusions, and recommendations no later than July 1, 1993.
- (1) The Special Master shall include in his final report to the Court and the parties, the language he proposes that the Court should use in the form of a permanent injunction to keep in place for the future, i.e., such procedures as needed to provide for and allow continued access to the courts by the class members.
 - (2) The Court will subsequently conduct hearings that it deems necessary to determine the language of the final injunction.

- (3) The parties involved may procure the attendance of witnesses before the Special Master by the issuance and service of subpoenas, and may offer testimony and witnesses in support or opposition, and may cross-examine opposing witnesses. This does not preclude any party from objecting to the subpoena and raising any legitimate defenses subject to the ruling of the Special Master.
- (4) Within ten days after being served with notice of the filing of the Special Master's report, any party may serve written objects thereto upon the other parties and the Court. The Court may accept, or may modify or reject the report after examination of the report and the objections, or may receive further evidence.
- (5) The special master will be available to provide testimony about his findings, conclusions, and recommendations at hearings scheduled at the request of the parties, special master, or Court to determine the parameters of the final order.
- (6) The special master shall have all powers necessary to carry out these functions including access to underlying documents, prison records, and other information, cooperation from ADOC personnel, and contact with prisoners.
- (7) The Court will describe any continuing duties of the special masters when it issues its final judgment. However, the special master may also make recommendations as to what these continuing duties should entail.

- (8) All costs and expenses, including a reasonable compensation for the responsibilities of performing the duties of special master shall be covered by defendants.

(3) *The Special Master shall have the following Powers:*

- (a) The Special Master shall have direct inmate access. ADOC shall inform inmates of the right to access to the Special Master. ADOC shall not interfere with inmate attempts to contact the Special Master or with any letters to or from the Special Master, and shall provide a place for the Special Master to meet with inmates.
- (b) The Special Master has and shall exercise the power to regulate all proceedings and every hearing before the Special Master, and to do all acts and take all measures necessary or proper for the efficient performance of the Special Master's duties.
- (c) The Special Master may require the production before the Special Master of evidence upon all matters embraced in the court order, including books, vouchers, documents, and other writings applicable thereto.
- (d) The Special Master has the authority to put witnesses under oath, and may examine them, and may summon the parties to appear at a hearing either to be examined under oath or for the purpose of conducting witness examinations.
- (e) If a summoned party fails to appear for hearing at the time and place appointed, the Special Master may proceed ex parte or, in the Special Master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

- (f) The Special Master may request the Court for an Order to Show Cause hearing directed to any person failing to appear at a hearing or failing to provide materials requested in response to a summons.

- (g) Any powers not included in this section but provided for elsewhere in this order shall be considered part of this section. Such powers shall also be incorporated by reference in all other sections of this order.

(4) *The Special Master shall be compensated in the following manner:*

- (a) The Special Master shall be paid \$120 per hour.³ The Assistant Special Master shall be paid \$65 per hour.
- (b) No later than the First day of each month, the Special Master and Assistant Special Master shall each submit an itemized statement of their fees for the previous month to defendants' counsel. The Special Master and Assistant Special Master will be compensated by the defendants for their fees within fourteen (14) days of receipt of the Special Master's monthly invoice. Such compensation will continue until the Special Master's duties are fulfilled according to the Court's order.
- (c) No later than December 4, 1992, Defendants' counsel, the Special Master and Assistant Special Master shall open and maintain a bank account to be utilized solely for reasonable expenses and costs necessary for performing the duties of Special Master. These costs include: necessary travel costs, expense for preparation

³ This is the same hourly rate the Special Master was paid in the *Gluth* case.

and production of written drafts and final reports, secretarial and clerical costs, and expenses incurred through conducting and transcribing necessary hearings. The defendants shall deposit at least \$5,000 in the account. The Special Master and Assistant Special Master shall have the authority to withdraw funds from the account to be used as expenses in this case. On the first day of each month, the Special Master shall notify defense counsel of the amount presently in the account. No later than the tenth day of each month, the defendants shall deposit funds into the account to replace those funds used in the previous month. No later than the tenth day of each month, the Special Master shall provide the defendants with a written, itemized statement, with necessary receipts, of all costs and expenses withdrawn from the account in the preceding month. Defendants may object to specific expenses in writing to the Special Master within 20 days of the written notice from the Special Master.

- (d) If there is an objection to particular itemized expenses, payment will not be deferred by the reasonableness of the expenses but will be brought before this Court for determination.
- (e) Within thirty (30) days after completing and submitting the final report, the special master shall submit to the Court a final bill of costs, expenses and compensation. If the defendants object to the payment of any of the expenses or costs, they shall file those objections within thirty (30) days of receipt of the final bill. The Court will examine that bill to determine if it is fair and reasonable under the circumstances.

(5) *The Special Master shall have the following duties after entry of the permanent injunction:*

The Special Master will conduct three evaluations of conditions of the Arizona State Prison Complex facilities relating to the Court's final order, at six month intervals following the entry of the order and shall file a report of his findings with the Clerk of the Court. He shall have any of the previously enumerated powers to facilitate his preparation of these reports.

(6) *Settlement:* Nothing contained in this order shall suggest that a settlement between the parties in this case would not be considered by the Court. To this end, the Special Master shall provide such guidance and counsel as either of the parties may request to effect such a settlement.

(7) *Notice:* Defendants shall post notices in every facility, in locations permitting daily visibility for prisoners in that facility, including in each library. The notices shall state that the Court has appointed a Special Master to formulate and monitor the relief involving the access to the courts issues, and that the Special Master or his Assistant will be visiting the facilities to talk to staff or prisoners. The notices will state that the Special Master is not a substitute for the regular grievance and disciplinary procedures for either prisoners or staff members. The Notice shall also inform prisoners that a copy of the Findings of Fact and Conclusions of Law and copies of orders in this case will be available for inspection by prisoners and staff at each facility law library.

Dated this 20 day of November, 1992.

/s/ C.A. Muecke
C.A. MUECKE
United States District Judge

Arizona Department of Corrections (ADOC) shall provide meaningful access to the courts for all Central Unit prisoners. The practices and procedures set out below will achieve this constitutional mandate. They concern those areas raised by or necessarily implicated in this litigation and incorporate approaches utilized by Central Unit administrators.

I. THE LAW LIBRARY

ADOC shall maintain an adequate law library and provide sufficient access and assistance to enable prisoners to engage in the basic legal research required for meaningful access to the courts.

A. Access

Central unit prisoners in all housing areas and custody levels shall be provided regular and comparable visits to the law library. This opportunity may be postponed on an individual basis because of the prisoner's documented inability to use the law library without creating a threat to safety or security, or his physical condition if determined by medical personnel to prevent library use. Upon request, a Central Unit prisoner will be permitted a minimum of ten hours of actual law library use each week; additional time shall be allowed if necessary to meet a filing or other legal deadline.

B. Schedule

The law library shall be open for prisoner use at least twelve hours each day between the hours of 7 a.m. and 10 p.m. A minimum of four turnouts will be scheduled each day. Each turnout must provide prisoners a minimum of two hours of actual library use. Every prisoner should sign the log-book at the law library to indicate the time of arrival and departure from the library for that turnout; copies of the relevant log-book pages shall be maintained for the Special Master.

Upon arrival at the law library, a prisoner may choose to sit in either reading room for that turnout, provided that the rooms are not reserved for different custody levels or runs, and no other documented security considerations exist. This choice is subject to the need to maintain comparable numbers in each room, although a prisoner shall be allowed to sit with any prisoner providing legal help and scheduled for that turnout, even if not a "Legal Assistant."

C. Request Procedure

Prisoners shall be responsible for selecting their law library turnouts and reducing conflicts with other institutional activities, and for depositing their requests and copies directly in the appropriate receptacles; this requires that ADOC provide timely and adequate information, forms, and access to receptacles, as set out below.

The first library turnout requested by a prisoner must be at least three days after the day the form is deposited; this may be one day if necessary to meet a legal deadline. The week referred to in I(A) begins the day of the first scheduled turnout, and at least ten hours of library use shall be permitted during this seven-day period.

Defendants shall provide adequate notification of the above procedures and timetables, including posting in each cell-block. The Special Master, in consultation with plaintiffs and defendants, shall analyze the turnout schedule, focusing on those periods regularly revealing below-average attendance, and ascertain whether any alterations should be made to increase the library availability for one custody level without reducing the opportunities for another.

1. Information

At least one week prior to the end of each month ADOC shall make known to all prisoners (a) the law library schedule of hours and turnouts for the next month,

and (b) the specific schedule of important activities at the Central Unit for the next month, including outside visiting hours, formal classes, religious services, and field turnouts for each housing area; this is not required for those items whose schedule (days and hours) remains the same in the upcoming month.

2. *Forms*

ADOC shall develop law library turnout and legal assistance request forms and have them regularly available in the housing areas and law library for distribution to prisoners. The law library form should minimally include space for the date submitted and for the selection of specific library turnouts and alternates for up to two weeks, and to detail any filing or other legal deadline. Any such deadline should be verified by relevant documentation identified and possessed by the prisoner or included with the request, or by a description of this information and explanation of why it is not available.

3. *Receptacles*

ADOC shall maintain secure, tamper-resistant receptacles for law library and other legal assistance requests from prisoners. These receptacles must be accessible to prisoners in all housing areas and custody levels at the Central Unit on a daily basis; this minimally requires placement of such a receptacle at both doors to the main dining area. ADOC should develop a method of direct, daily placement in appropriate receptacles of requests from individual prisoners who are unable to use this dining area; this may require additional receptacles.

ADOC shall maintain secure, tamper-resistant, and accessible receptacles for the deposit of prisoner communications or complaints to the Special Master. The Special Master will have regular access to these receptacles and sole responsibility for collection.

D. *Response Procedure*

Law Library staff or clerks shall collect the original prisoner law library and other legal assistance forms from each deposit point at least once every day. ADOC must develop procedures for scheduling law library turnouts that provide adequate notice and access for all eligible prisoners with preference for those with filing or other legal deadlines, and that insure compliance with this Order. This minimally requires that the CU law library be equipped with a computer that is regularly and primarily used for this purpose.

Denial of a particular turnout may be based on a lack of available library space for that period, or on a finding that the requesting prisoner and a prisoner previously scheduled for that period cannot be together in the library without creating a serious threat to safety or security. If a denial occurs, the prisoner shall be given preference on his remaining requests or a timely opportunity to make additional requests if necessary to meet the weekly ten-hour minimum requirement.

A prisoner shall be provided written notification of his scheduled law library turnouts and of any denied with the reason and factual basis for the denial, and given the opportunity to make additional requests if necessary. This notice must reach the prisoner at least 24-hours before the time of his first requested turnout whether this was granted or denied. Copies of the names or number of prisoners scheduled for each turnout, and of the number of percent of those who attended, will be kept at the law library for collection by the Special Master.

E. *Law Clerks*

ADOC shall provide a sufficient number of law library prisoner law clerks to permit adequate assistance for prisoners using the library and for those ineligible for such use, including Spanish-speaking prisoners in both cate-

gories. This assistance includes providing elementary information about the content and purpose of the books and materials in the library, and about researching specified issues and locating relevant decisions, statutes, regulations and forms. In order to adequately perform this basic function, law clerks must successfully complete the legal research course, described in II(D) below, either prior to beginning work, or the first time it is available. In contrast to Legal Assistants, law clerks shall provide guidance to all eligible prisoners, although such guidance is limited in scope and does not extend to the preparation of legal documents for others.

As long as the inmate population at the Central Unit remains at its current level, there shall be a minimum of 14 law-library clerks employed at the CU. For each turnout, at least two law clerks per reading room shall be assigned to provide the court-ordered research assistance in the room and book retrieval for that room. To achieve this, prisoners with research experience and ability shall be solicited and favored for the law clerk positions by the relevant CU committees and administrators. Defendants shall implement a viable method to provide law clerk assistance for PC prisoners attending the law library.

F. *Research Guide*

Plaintiffs will prepare an introductory guide to the use of the law library, with brief explanations of the contents and use of the available resources and elementary research assistance on the most common legal issues. Defendants will review the proposed introductory guide and have an opportunity to make comments and/or suggest revisions. After approval by the Special Master, this guide shall be printed by defendants, and made available to all requesting prisoners while attending the law library.

G. *Librarian*

ADOC shall provide at least one full-time professionally trained librarian and adequate secretarial support for the librarian and law library. Subject to identified security needs, the librarian will be responsible for the policies and procedures in the law library and for insuring adequate access to the courts for CU prisoners. The librarian shall possess a library science degree, law degree, or paralegal degree. The librarian shall be paid a salary equal to that of other ADOC law librarians with additional amounts or incentives if necessitated by conditions at CU. The Special Master will work with ADOC on securing applicants, including contacting schools and professional organizations. The Court will consider modification of this requirement if, despite good faith efforts, a qualified candidate has not accepted this position after two fiscal years.

H. *Conduct*

ADOC may require prisoners to remain in the law library for the full turnout period. After being warned when possible, a prisoner may be involuntarily removed from the library if he continues to create a threat to safety or security, or to directly interfere with others' use of the library. Within 48 hours of removal, the prisoner must be provided written notice of the reasons and factual basis for this decision, with a copy held for the Special Master. Non-intrusive actions, including reasonable conversations with prisoners of staff, writing, and sitting quietly, are permitted.

I. *"Check-Out" System*

If prisoners are denied direct access to the stacks because of documented problems attributable to this access, ADOC must act to allow adequate research. At a minimum, upon a single check-out request for more than one book, a law library clerk shall retrieve at least two books

for the prisoner; this does not affect the practice permitting prisoner use of more than two books at a time while in the reading room.

J. *Noise Level*

The level of noise in the enclosed reading rooms has often been unacceptably high and ADOC must correct this problem. At a minimum, the glass in the windows separating the reading rooms and the stack area shall be removed. Chain or wire material may be installed provided that this does not interfere with the sound-flow or sight-line; such material should not inhibit normal conversation through the window between a prisoner in the reading room and assisting law clerk in the stack area, nor make it difficult to read book titles and covers of other materials.

K. *Paging System*

Individual prisoners who are not able or permitted to visit the law library must be allowed regular and timely access to necessary books and materials. This minimally requires daily exchanges between such prisoners and law library representatives of an adequate amount for research purposes of requested books and materials, or copies, including cases, statutes, annotations, regulations, forms, secondary sources, and research guides.

II. *THE LEGAL ASSISTANCE PROGRAM*

Meaningful access to the courts requires direct assistance for prisoners who, because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing. In the absence of a program providing such prisoners with lawyers or paralegals, ADOC must maintain a sufficient number of at least minimally trained prisoner Legal Assistants.

A. *Selection*

A prisoner shall become a Legal Assistant by agreeing to abide by the procedures governing Legal Assistants, and by taking the legal research course. It shall not be necessary for prisoners to take the course prior to being approved as a Legal Assistant or beginning work. Such persons must have some legal research training, experience, or ability, and, after selection, must successfully complete the course when first available; these persons shall be given preference for the course. Prisoners are eligible for the legal research course if (a) they have a High-School or GED diploma, or (b) pass a basic literacy skills test to the satisfaction of the instructor, or (c) are presently on the Central Unit Legal Assistant list.

An otherwise eligible prisoner may be denied Legal Assistance status by the Deputy Warden or designee because of documented prison behavior indicating that he would create a threat to safety or security in that position; such rejection may not be based solely on a particular custody level or housing area. A prisoner must be provided written notification of a rejection, with the reasons and specific acts involved, and permitted an opportunity to appeal this determination; the notice and response shall be provided to the Special Master.

B. *Number*

ADOC shall act to insure an adequate minimum number of Legal Assistants for each custody level; there is no maximum. Particular steps must be taken to locate and train bilingual prisoners. This minimally requires that schedules and notices relating to Central Unit legal services and programs be made available in Spanish and English.

C. *Retention*

A Legal Assistant must demonstrate at least minimal competence after one year, and thereafter upon the receipt of complaints about his legal work. This may be

done by submitting sufficient recent legal writings, including pleadings and memoranda, to the legal research instructor for review. If necessary, the instructor may require that the Legal Assistant complete an exercise or examination from the legal research course for evaluation. A determination by the instructor to remove a prisoner found not minimally competent from the Legal Assistant list must be made in writing with specific reasons and examples, and the relevant work products attached; this shall be provided to the Special Master. Such a prisoner should be reinstated upon compliance with the requirements of II(A) above.

D. *Research Course*

ADOC shall offer a legal research and writing course for Central Unit prisoners. The Special Master will work directly with persons designated by the ADOC on the development and implementation of this course and report the details to the Court.

In developing the course, the following elements are required:

(a) a minimum of sixty (60) hours of instruction provided in a ten-to-twelve week period, with two such courses given each year;

(b) a lawyer, law student or otherwise trained paralegal instructor with demonstrated experience and ability in teaching and evaluating legal research and writing;

(c) a hands-on approach to the needs of Central Unit prisoners, including some sessions in the law library and the rest in a classroom allowing for immediate teacher-student interaction;

(d) all sessions videotaped for restricted-movement prisoners. This requirement will be waived until 1995 because of the existence of a recently taped course. Defendants shall maintain and make available the course tapes as required;

(e) a primary focus on the fundamentals of research and writing, including use of basic reference books and materials, with regular written exercises required and returned with comments during the course;

(f) some doctrinal coverage of 42 U.S.C. Section 1983 and other major civil rights statutes, of prison practices including disciplinary and classification measures, of relevant tort law and relevant areas of criminal procedure including appeals, collateral attacks and Habeas Corpus;

(g) all Central Unit prisoners are eligible, with classroom preference given to qualifying Legal Assistant and law clerk applicants, and

(h) a final evaluation based on a student's performance in class and on assignments and examinations, taking into account improvement during the course, as to whether the prisoner is minimally competent to assist others with their legal problems; this certification is not required for those taking the course for other reasons.

E. *Responsibilities*

A Legal Assistant should not undertake or continue to assist another prisoner if, because of workload, inexperience, conflict of interest, or any other factor, he cannot do so in an effective and timely manner; and such factor may serve as the basis for denying a prisoner's request for assistance. On occasion, a Legal Assistant should be prepared to respond to an institutional request to assist another prisoner or to assess the viability of a legal claim.

Absent the prisoner's permission, a Legal Assistant should not disclose information about the underlying situation or legal plans of a prisoner being assisted. If this is done under the limited circumstance of II(F)(5) below, the resulting conflict of interest minimally requires a reassessment of the relationship with the prisoner being assisted.

F. *Operating Procedures*

1. *Selecting a Legal Assistant*

An updated complete list of Legal Assistants must be regularly available in the law library and housing areas, with all relevant instructions about the Legal Assistant Program, including the selection process. An agreement between a prisoner seeking assistance and a Legal Assistant will be registered in the law library after placement of the appropriate form and copy by this prisoner in legal assistance receptacles. Written notification of the registry, or of a denial because of mistake or ineligibility and the opportunity for an alternate selection, shall be provided to the prisoner and to the Legal Assistant within 48 hours of this placement, with a copy held for the Special Master.

A prisoner who is unable to reach agreement with a Legal Assistant, or requires a replacement, may seek institutional intervention by filing a request form and copy in the appropriate receptacles. Upon receipt, law library staff and the Deputy Warden shall act to secure the requested assistance in a timely fashion. The institution will be relieved of this responsibility in a particular matter if two Legal Assistants independently conclude after adequate review that the prisoner's claim is not viable nor capable of redress by formal legal processes; such responses shall be provided to the Special Master.

2. *Meetings*

A Central Unit prisoner shall request a meeting with his Legal Assistant by use of a legal assistance form and receptacle. Legal Assistants may initiate such meetings in the same manner. Provided that other applicable requirements are met, including access equivalent to I(C) (3), ADOC may utilize an alternative method of requesting a meeting when the sole purpose is preparation for a disciplinary hearing. ADOC must arrange a meeting that

occurs within 72 hours of a request, and notify the prisoner and Legal Assistant in writing of the time and place at least 24 hours prior to the meeting. An imminent legal deadline, including a pending disciplinary hearing, noted on a request requires an expedited meeting occurring within 24 hours of the request by a prisoner or Legal Assistant; II(F)(2) does not otherwise apply to assistance provided solely for a pending disciplinary matter.

ADOC must allow a prisoner to meet at least three hours each week with his Legal Assistant; additional time shall be permitted to meet a filing or other legal deadline. Such meetings may occur during law library turnouts; a request by a prisoner or Legal Assistant to have both persons scheduled for a particular turnout shall be given preference. If the library is not requested or available, another location allowing the necessary privacy should be utilized.

3. *Library Time*

ADOC shall provide Legal Assistants with additional time in the law library commensurate with their obligations to assist other prisoners. In addition to his own hours required by I(A) and (B), above, a Legal Assistant should be allotted two additional turnouts per week, each providing a minimum of two hours of actual library use, for each prisoner that he is registered as assisting. Any such additional turnouts scheduled for a Legal Assistant shall be subtracted from the weekly minimum of the prisoner being assisted. If necessitated by lack of available library space, ADOC may limit such additional turnouts to five in a particular week.

4. *Supplies and Services*

A Legal Assistant may possess and utilize the legal supplies and services available to a prisoner he is registered as assisting solely for purposes relating to this assistance. If this prisoner is indigent, the Legal Assistant will be

permitted those free legal supplies and services that are provided to indigent prisoners. These supplies and services must first be requested by the indigent prisoner for delivery to either the Legal Assistant or himself.

5. *Disclosure*

The attorney-client privilege does not attach to the prisoner-Legal Assistant relationship; if prompted by a serious concern of institutional safety or security ADOC may ask a Legal Assistant to reveal information derived from this relationship. Such a request should be limited in scope to this concern and not seek more information than necessary, and shall result in permitting the prisoner to change Legal Assistants in order to be adequately represented and in notice to the Special Master.

Meetings and discussions between a prisoner and his Legal Assistant should not be subjected to intentional or extended eavesdropping. A prisoner shall not be given Legal Assistant status nor assigned to a particular legal assistance matter with the objective of providing information to institutional personnel.

G. *Other Prisoner Assistance*

Nothing contained herein shall reduce a prisoner's opportunity to consult with any prisoner accessible to him in the Central Unit about a legal matter, nor prohibit any prisoner, consistent with institutional requirements, from providing assistance on legal concerns including court-related matters and institutional proceedings.

H. *Outside Legal Contacts*

Nothing herein reduces defendants' obligation to facilitate confidential and privileged contacts between Central Unit prisoners and outside lawyers, authorized paralegals, legal organizations, governmental agencies and courts, through regular visits and adequate use of telephones and mails.

III. *LEGAL SERVICES AND SUPPLIES*

Meaningful access to the courts requires the availability of basic services and supplies needed for research and writing, and for the preparation and delivery of acceptable court papers.

A. *Notary Service*

ADOC must provide notary service for legal papers and court-related documents within 24 hours of a request by a Central Unit prisoner; this period shall be less if necessary to meet a legal deadline. The request may be made in person during a law library turnout or by use of a legal assistance receptacle.

B. *Photocopying*

ADOC must provide the necessary copies of eligible legal papers and court-related documents within 48 hours of a request by a Central Unit prisoner; this period shall be less if necessary to meet a legal deadline. The request may be made in person during a law library turnout or by use of a legal assistance receptacle. ADOC may charge a reasonable rate for this service, up to five cents per page.

Eligible legal papers and documents include petitions, complaints, answers, motions, affidavits, exhibits, memoranda and briefs, including attachments and appendices, and materials needed for discovery and investigation, including interrogatories and freedom of information requests. ADOC shall advise staff that prisoner legal materials are confidential and should not be read. Legal materials submitted for copying may be initially examined, but not read, to determine eligibility.

C. *Typewriters*

Central Unit prisoners may possess typewriters and necessary accessories. ADOC shall also provide an adequate number of functioning typewriters in the law library and

other appropriate locations for prisoner use in the preparation of legal papers. For the library, this minimally requires a one-to-five ratio of electric typewriters-to-law library capacity; such typewriters must be covered by a service contract or other professional repair system used at the CU.

D. Supplies

The Central Unit shall have sufficient quantities of basic legal supplies regularly available for purchase by prisoners. Such supplies minimally include pens, pencils, legal pads, typing paper, typewriter ribbons, ko-rec-type or equivalent, file folders, regular size and manila envelopes, postage and brief covers and bindings. A reasonable price may be charged for these items, within the departmental guideline of a ten percent above cost maximum mark-up. The prices of all items, legal or otherwise, available for purchase in the Central Unit must be publicized prior to ordering by prisoners. Subject to usual security and search procedures, prisoners may receive any basic legal supplies, books, and materials by delivery or mail from outside persons, organizations or businesses.

IV. INDIGENT PRISONERS

A. Eligibility

Subject to the requirements contained herein, a prisoner shall be provided basic legal supplies and services at ADOC expense if: (a) he has less than \$46.00 in his prison account on the date of the request, and (b) there have been less than \$46.00 in total deposits to his account in the 28-day period ending on the date of the request. A prisoner who meets (a) but not (b) shall be provided those specific supplies and services required to meet an imminent and documented legal deadline, and a written statement of the costs of these. If this occurs, ADOC may, with written notice to the prisoner, debit the prisoner's account whenever and to the extent that his

balance exceeds \$46.00 until the cost of the emergency items is repaid.

ADOC shall regularly adjust the above cut-off figure in order to adequately insure a prisoner's access to basic legal supplies and services without sacrificing basic hygiene needs. The adjustment shall occur at least every twenty-four months beginning the date of entry of this Order. It shall minimally be the percent change in the U.S. Consumer Price Index for the previous twenty-four months multiplied by the existing cut-off figure. The resulting new cut-off figure shall be rounded to the nearest fifty-cents.

B. Supplies and Services

1. Supplies

Upon request the following supplies shall be provided to eligible prisoners; the numbers in parentheses indicate the minimum amount of the items that must be provided for one week: pens (1), pencils (1), typing paper (10 sheets), legal pad (1), file folders (1), and regular envelopes (4). Brief covers and bindings, manila envelopes, and additional amounts of the above supplies shall be provided if necessary to meet a court deadline or requirement. Upon request, an eligible prisoner possessing a typewriter shall also be provided one typewriter ribbon and one ko-rec-type or equivalent, each week.

ADOC may require that the requesting prisoner check the specific items needed for legal research or preparation of legal papers during the next week. Pursuant to Section II(F)(4), the prisoner should indicate which, if any, of the supplies should be delivered directly to his legal assistant for work on his case.

2. Postage

Postage shall be provided for all legal mail for eligible prisoners. Legal mail includes letters and documents sent to a court, to an attorney, to a legal agency or organization or a pro se opposing party.

C. *Photocopying*

Eligible prisoners shall be provided the necessary copies of legal papers and court related documents as described in Section III(B).

All legal materials are confidential; those submitted for copying may be initially examined but not read, to determine eligibility. The prisoner shall minimally be provided with the number of copies of a document required by the court, plus one copy for the opposing party and one for his records.

D. *Request Procedure*

The request procedures and forms shall comply with the applicable requirements of Section I(C). The request may be completed and delivered in person during a law library turnout or placed in the appropriate receptacle. The prisoner should indicate that to his knowledge he meets the eligibility requirements, which supplies and services are required for the next week, and which should go to his legal assistant.

E. *Response Procedure*

Law library staff or clerks shall collect the prisoner request forms from each deposit point at least once each day. ADOC shall deliver the requested supplies or services to an eligible prisoner or designated legal assistant within 48 hours of the request; this period shall be less if necessary to meet a legal deadline. A prisoner shall be provided written notification of a denial of all or part of his request, with the specific reasons and factual basis, within 48 hours of the request. If required by the closing of the Business Office on Saturday and Sunday, processing of a request submitted on Friday, Saturday or Sunday may be delayed until the following Monday.

V. *IMPLEMENTATION*

A. *Notice*

Plaintiffs may transmit this Order to members of the plaintiff class by mail or delivery of identified copies to the CU, and may provide ADOC with additional copies that will be kept on reserve in the Central Unit law library and made available to prisoners during library turnouts. Plaintiffs or the Special Master will provide ADOC with a summary of this Order which shall be made regularly available in the law library and all housing areas.

B. *Special Master*

All orders concerning the powers, payment and responsibilities of the Special master, Professor Daniel J. Pochoda, are herein incorporated. Above references to the Special Master include his authorized representatives and assistants.